TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 95

TALBOT JENNINGS, PETITIONER,

vs.

PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED APRIL 9, 1951.

CERTIORARI GRANTED JUNE 4, 1951.

SUPREME COURT OF THE UNITED STATES

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INDEX

		Original	Print
Proceedings in Supreme Court of Illinois		a	1
Caption	(omitted in printing)	a	
Notice	(omitted in printing)	b	
Motion as to record and briefs		d	1
Affidavit in forma pauperis	(omitted in printing)	f	
Application for writ of error		g	2
Record from Criminal Court of Cook County		1	7
Petition		2	7
Exhibit A—Common Law Record, Criminal Court of Cook County		23	26
Minute entries of trial		24	26
Indictment		25	27
Order continuing cause		29	32
Order assigning cause		32	32
Orders continuing cause		32	32
Motion to suppress evidence		35	33
Order overruling motion to suppress		38	34
Orders continuing cause		39	35
Motion to discharge defendant, overruled		41	38
Selection of jurors		42	36
Motion for instructed verdict, overruled		49	39
Verdict		54	40

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 3, 1951.

—5842

	Original	Print
Record from Criminal Court of Cook County—Continued		
Petition—Continued		
Exhibit A—Common Law Record, Criminal Court of Cook County—Continued		
Minute entries of trial—Continued		
Motion for new trial	56	41
Order overruling motion	58	43
Motion in arrest of judgment	59	43
Order overruling motion	60	43
Judgment and sentence	60	44
Clerk's certificate (omitted in printing)	62	
Exhibit B—Transcript of portion of proceedings on motion to suppress evidence	63	45
Testimony of Raymond Hutchison	64	45
Testimony of Edward Piotter	81	56
Exhibit C—Affidavit of Roseanna Watson	95	63
D—Affidavit of Evelyn Jackson	96	64
E—Affidavit of James R. Marshall	97	64
F—Affidavit of Nettie Smith	98	65
G—Affidavit of Arthur Smith	99	66
H—Testimony of Edward M. Piotter	100	66
Supplementary Exhibit 1—Excerpt from proceedings on motion to suppress evidence	192	121
Supplementary Exhibit 1 (part two)—Transcript of proceedings of—		
October 4, 1948	198	124
November 4, 1948	208	128
December 13, 1948	212	129
Supplementary Exhibit 1 (part three)—Transcript of proceedings of—		
July 28, 1948	224	134
August 26, 1948	227	136
Supplementary Exhibit 2—Testimony of James Hughes	234	139
Supplementary Exhibit 2 (part two)—Testimony of Richard Ayers	281	165
Supplementary Exhibit 3—Testimony of Fred Anderson	290	169
Motion to strike petition	309	180
Order dismissing petition	310	181
Praecipe for record	312	182
Proof of service (omitted in printing)	313	
Certificate of correctness	315	183
Order dismissing petition for writ of error	317	184
Clerk's certificate (omitted in printing)	318	
Order granting certiorari	319	185

[fols. a-d]

IN THE SUPREME CF THE STATE OF ILLINOIS, MARCH TERM, A. D. 1951

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent,

Defendant in Error,

vs.

TALBOT JENNINGS, Petitioner, Plaintiff in Error

Petition for Writ of Error Under Post Conviction Hearing Act, to Criminal Court of Cook County

Honorable Alan E. Ashcraft, Jr., Judge, Presiding

MOTION—Filed February 5, 1951

To: The Honorable the Chief Justice, and the Associate Justices of the Supreme Court of the State of Illinois.

May It Please the Court:

Comes now, Talbot Jennings, plaintiff in error in the above entitled cause and the movant herein, and respectfully moves this Honorable Court for leave to file the trial court record submitted herewith for the consideration of this cause of action brought in the above entitled cause, and for his reason represents the following facts, to-wit:

1. That prior to the adoption of Rule 27B, he had filed a praecipe for record with the Clerk of the Criminal Court of Cook County and submitted the "Original Exhibits" and other records, filed in said Court in support of his post conviction petition, to be compared with the copies on file and certified for presentation to this Honorable Court as will more fully appear in the praecipe incorporated in the trial court record submitted herewith, See: (Rec. 312-313);

2. That because of the numbering of the pages of said record submitted herewith will enable the plaintiff in error in the above entitled cause to prepare and file an Abstract of said record together with his Brief, if his Petition for Writ of Error Under the Post Conviction Hearing Act attached hereto is granted by this Honorable Court.

Wherefore, it is respectfully prayed that this Court will accept the properly certified trial court record submitted herewith, as certified by the Clerk and signed by the Trial Judge of the Criminal Court of Cook County in considering this cause on its merits.

[fols. e-f] Plaintiff in error and the movant herein further moves this Honorable Court that he be granted leave to file to the May Term of this Court eight (8) typewritten copies of the Brief and Abstract in this case, and to serve one (1) copy each of the Brief and Abstract on the State's Attorney and the Attorney General in lieu of the requisite number of copies required by Rule 40 of this Court because by virtue of his poverty, plaintiff in error is unable to comply with the requirements of said Rule as to the printed matter referred to therein.

In support of this motion, the movant herein, attaches hereto and submits herewith his affidavit in forma pauperis and verity of the foregoing motion.

Respectfully submitted, Talbot Jennings, Movant, Pro Se.

Duly sworn to by Talbot Jennings. Jurat omitted in printing.

[fol. g] SUPREME COURT OF THE STATE OF ILLINOIS

APPLICATION FOR WRIT OF ERROR—Filed February 5, 1951

To: The Honorable the Chief Justice, and the Associate Justices of the Supreme Court of the State of Illinois.

May It Please the Court:

Comes now, Talbot Jennings, plaintiff in error in the above entitled cause, by and through himself, in his own proper person and respectfully petitions the Court, for leave to file, commence and prosecute to a conclusion a writ of error to the Criminal Court of Cook County, Illinois, in forma pauperis; pursuant to the provisions of Chapter 33, paragraph 5 et seq. and Chapter 38, paragraph 832, of the Illinois Revised Statutes, 1949, and Rule 27B of this Court, in order that this Honorable Court may be able to review upon the trial court record, the final judgment and order of said Criminal Court rendered on the

1st day of November, 1950. Dismissing plaintiff in error's post conviction petition seeking redress of violations of his constitutional rights occurring during the course of trial, as provided under the provisions in Chapter 38, paragraphs 826-832 inclusive, of the Illinois Revised Statutes, 1949.

Petitioner sets forth that his constitutional rights were violated under Article 11, Sections 2, 6, 9 and 10 of the Illinois Constitution, and under the 4th, 5th, 6th and 14th Amendments of the United States Constitution. And to show that he has a meritorious cause of action, the petitioner herein submits the following facts supported by the trial court record, to-wit:

[fol. 1.]

Statement

I

Petitioner alleges that, he was illegally and unreasonably arrested and evidence obtained through illegal search and seizure was used over his objection by prosecuting officials to obtain his conviction. See: (Rec. 34-38 inclusive); that he was arrested on the sole information given to police by an alleged accomplice held in custody by the police, (Rec. 127); that the police did not have any warrant to arrest, search or seize petitioner or any of his property, (Rec. 87 & 92).

Major question presented for review: *Whether police officers making arrest, search and seizure without warrants, proceed as prudent and cautious men when told by an accomplice that a certain person is implicated in a crime.*

II

Petitioner alleges that, confessions obtained by force, violence and illegal detention were used to obtain his conviction, (Rec. 131-135 inclusive); that he was denied the aid of counsel, (Rec. 95-96); that he was held incommunicado in River Forest Illinois by the police of Oak Park Illinois who held petitioner in custody and exceeded their jurisdiction by having petitioner secretly held in River Forest Illinois, another independent township which the police force therein had no charge against petitioner whatsoever, until they, the Oak Park police, could compel petitioner through violence and deprivation of friends and

counsel to make a joint confession with an alleged accomplice. (Rec. 285-288 inclusive); that the arresting officer denied that petitioner was held in River Forest Illinois, (Rec. 152); that he was not given a prompt hearing before the Justice of the Peace of Oak Park as provided by statute, (Rec. 10 & 11).

Major question presented for review: *Whether the use of a coerced confession as a means of obtaining a verdict of guilty constitutes a denial of "due process of law".*

[fol. i]

III

Petitioner alleges that, he was not given a speedy trial by being tried within "four months" as by statute provided, which delay was not on his part; that he loss a valuable witness because of the long delay in being brought to trial, (Rec. 97); that from August 13th, 1948 to December 23rd, 1948, petitioner did not cause any delay in being brought to trial, (Rec. 34-42 inclusive); that the delays were arbitrary and discretionary action on the part of the trial court, and dilatory methods, without just cause, on the part of the prosecuting officials. See: Proceedings had on July 28th, 1948 (Rec. 224-226 inclusive); Proceedings had on August 13th, 1948, (Rec. 192-197 inclusive); Proceedings had on August 26th, 1948, (Rec. 227-233 inclusive); Proceedings had on October 4th, 1948, (Rec. 198-207 inclusive); Proceedings had on November 4th, 1948, (Rec. 208-211 inclusive); Proceedings had on December 13th, 1948, (Rec. 212-22 inclusive).

Major questions presented for review: *Whether a motion to suppress made in apt time and disposed of at the "convenience" and "discretion" of the trial court can be considered a dilatory motion on the part of the petitioner, since a motion to suppress is a motion to expedite the trial proceedings; Whether any continuances on the trial court's own motion can be construed as delay in being brought to trial on petitioner's part simply because he made a motion to suppress illegal evidence; Whether the loss of a witness because of long delay in being brought to trial is a denial of due process in itself.*

IV

Petitioner alleges that, he was denied due process and equal protection of the law through perjury and fraud

known to and abetted by the prosecuting officials; that the arresting officer, Det. Edward Piotter, denied that any personal property was seized in the apartment at the time of petitioner's arrest, (Rec. 89-92 inclusive); that during [fol. j] the trial the prosecuting officials introduced into evidence a gold ring seized from petitioner at the time of his arrest and the same Det. Edward Piotter recalled all the while that a ring was seized from petitioner in the apartment at the time of his arrest, (Rec. 129-130 inclusive) (Rec. 185-187 inclusive); that the trial court denied petitioner's motion to suppress on the grounds "that no personal property was seized at the time of his arrest, (Rec. 227-231 inclusive); that because of said perjury and fraud, petitioner was denied full and fair adjudication of his motion to suppress and equal protection of the law, by reason that the co-defendant Morgan received a full adjudication of his motion to suppress by an opinion rendered by the trial court, (Rec. 199-204 inclusive).

Petitioner further alleges that, the same Det. Piotter gave false and misleading testimony under cross-examination to the great prejudice of petitioner by arousing prejudice in the minds of the Jurors in his anxiety to aid in the conviction of the petitioner, by reason that he testified that petitioner stated at the time of his arrest that he intended to jump out of the bathroom window if he could have gotten dressed in time, (Rec. 180-181); that under direct-examination Det. Piotter testified that the petitioner gave no explanation for being in the bathroom at the time of his arrest, (Rec. 130).

Major questions presented for review: *Whether during the hearing of a motion to suppress illegal evidence the prosecution has a right to suppress knowledge of any evidence seized by not bringing forth said evidence for a full and fair adjudication of said evidence material to the issue in question; Whether using said evidence during the trial is sufficient to deny due process of law when said evidence is tainted with "perjury", "fraud" and "connivance" on the parts of police officers and prosecuting officials.*

V

Petitioner alleges that, he was denied due process of law [fols. k-n] by prejudicial misconduct of the State's Attorney by calling petitioner's witness a perjurer in his closing

argument before the jury without evidence to sustain his prejudicial remark, (Rec. 19-20); that he was not convicted beyond a reasonable doubt and is innocent of the charge he was convicted on; that he was living in Detroit, Michigan on May 24th, 1948, the date of the alleged robbery that he was unjustly convicted of, (Rec. 98, also See Rec. 234-280 inclusive); that the prosecuting witness identified other suspects and therefore could not be positive of petitioner being one of the men whom robbed him, (Rec. 304-305 inclusive); that he was "framed" and definitely did not participate in any robbery in Oak Park, Illinois on May 24th, 1948, (Rec. 99).

Major question presented for review: *Whether obtaining conviction by prejudice and inflam-atory remarks is a denial of due process and fair play.*

VI

The final judgment and order of the trial court on petitioner's post conviction petition was entered on the 1st day of November, 1950, sustaining the People's Motion to Dismiss and dismissing petitioner's petition without granting a full hearing on the merits.

The major question for review: Whether a "General Motion to Dismiss" admits the facts well pleaded to be true on all facts which present a substantial violation of petitioner's constitutional rights. (Rec. 309-310 inclusive.)

Conclusion.

Since the Totality of Facts presented herein present a substantial violation of petitioner's constitutional rights it is respectfully prayed that petitioner's application for Writ of Error Under the Post Conviction Hearing Act be granted.

Respectfully submitted, Talbot Jennings, Petitioner, Pro Se.

[fol. 1] IN THE CRIMINAL COURT OF COOK COUNTY, — TERM, 1950.

P. C. No. 61

TALBOT JENNINGS, Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent

CONTENTS

AMENDED PETITION FOR REDRESS OF ALLEGED INFRACTIONS OF CONSTITUTIONAL RIGHTS, OCCURRING DURING THE COURSE OF TRIAL, BROUGHT IN FORMA PAUPERIS. UNDER CHAP. 38. PARS. 826-832 ILL. REV. STAT. 1949. FIVE PHOTOSTATIC COPIES OF AFFIDAVITS OF WITNESSES. COMMON-LAW-RECORD IN CASE NO. 48-1247. PORTIONS OF THE TRANSCRIPT OF PROCEEDINGS HAD IN CASE NO. 48-1247.

To: Vincent J. Poklacki, Clerk of the Criminal Court of Cook County, 2600 S. California Ave., Chicago 8, Illinois.

Calvin P. Sawyer, Attorney for petitioner appointed by the Chicago Bar Association, First National Bank Bldg., Financial 6-3600.

Talbot Jennings, #28051, Petitioner, Pro Se. Address: Box 1112, Joliet, Illinois.

[fol. 2] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

PETITION—Filed February 5, 1951

To the Honorable Judges of the Criminal Court of Cook County:

May It Please The Court:

Now comes Talbot Jennings, the petitioner in the above entitled cause and leave of Court having been first had and obtained, files this his amended petition in compliance with the provisions of an act of the 66th General Assembly, more commonly known as the Barry Bill, Senate Bill 630,

as set forth in Chapter 38, paragraphs 826-832 of the 1949 edition of the Illinois Revised Statutes, and respectfully petitions this Honorable Court for redress of alleged infractions of rights guaranteed him by the Fourteenth Amendment to the Federal Constitution, and the Constitution of the State of Illinois, and his petition now here represents:

1. That your petitioner is a poor person, and has not the property or other means with which to pay the costs of these proceedings.

2. That because of his poverty, petitioner has no means with which to procure the complete records had in Cause No. 48-1247, necessary to materially aid in proving all of the allegations made in his petition. Said records are on file in the Criminal Court of Cook County and in the Office of the Official Court Reporters.

[fol. 3] 3. In support of petitioner's allegations made in the following Statement of Facts, he attaches hereto and makes a part of this petition:

(a) Five photostatic copies of affidavits of witnesses.

(b) A true certified copy of the Common Law Record in Cause No. 48-1247.

(c) And other certified evidence taken from the transcript of Proceedings had in Cause No. 48-1247, People of the State of Illinois vs. Talbot Jennings.

4. And your petitioner further shows, that he has not heretofore sought relief by any other remedies.

5. And your petitioner, complaining further shows, that he is now imprisoned in the Illinois State Penitentiary, pursuant to a final judgment of the Criminal Court of Cook County, rendered on the 28th day of January, 1949, in cause General Number 48-1247, wherein your petitioner was convicted of the crime of Armed Robbery, and sentenced thereon from ten (10) to twenty-five (25) years which said judgment was rendered after the following proceedings:

Statement of Facts

I

Petitioner's Constitutional Rights were violated under Art. 2, Sec. 6, of the Illinois State Constitution and under the Fourth Amendment of the United States Constitution.

in that he was Illegally and Unreasonably arrested and evidence obtained through Illegal Search and Seizure was used by prosecuting officials to secure his conviction.

1. On the morning of June 6, 1948, on or about 3:30 A.M. the petitioner was at the home of Mrs. Rosanna Watson and his fiancee, Miss Evelyn Jackson, located at 5303 South Dearborn Street, Chicago, Illinois, when five police officers (two of the Chicago Police Department and three of the Oak Park Police Department, Oak Park, Illinois) forced their way into the aforesaid premises and home and arrested the petitioner. After these officers of the law [fol. 4] had gained entrance into this home, they then identified themselves, and asked the petitioner who he was. The petitioner promptly told them his name, Talbert Jennings. The officers then told him he was under arrest. They then searched the house, and when they were requested to show a search warrant for this procedure and a warrant for petitioner's arrest, one of the officers replied that they didn't need one.

2. One of the officers, a detective named Edward Piotter, searched the person of the petitioner and seized therefrom a gentleman's diamond ring, and wrist watch. Det. Piotter after inspecting the jewelry gave the wrist watch to one of the other officers to inspect and put the diamond ring into his own pocket. The officer that Det. Piotter gave petitioner's watch to was lafer identified as Lt. Nester of the Oak Park Police, Oak Park, Illinois.

3. When the officers were preparing to take the petitioner from the house he asked Mrs. Watson to notify his relatives, and have them notify an attorney for him. One of the officers overheard his request and struck petitioner in the face. The officer then told Mrs. Watson she was not to notify any attorney, nor petitioner's relatives because it would do no good.

4. With the Honorable Court's permission petitioner would like to call to the Court's attention, that there was no formal complaint to search, seize or arrest petitioner or issuance of any warrant therewith, as shown by the record and testimony of the arresting police officers. Attached hereto and made a part of this petition is the testimony of Det. Piotter to verify the petitioner's allegation that there was no warrant whatsoever. See *Exhibit "B"*. Pages *26 to 30*. And when Mrs. Watson requested the officers to produce a warrant before entering the home and premises

she was knocked out of the door by one of the officers, and their entrance was made in this manner. The petitioner would like to also call to this Honorable Court's [fol. 5] attention, that attached hereto and made a part of this petition are two sworn affidavits to support the contention herein pointed out, that petitioner was abused during his arrest, *See Exhibits Marked—"C" and "D".*

5. Petitioner at this time would like to call to the Honorable Court's attention that on August 13, 1948 before Hon. Alan E. Ashcraft, in the Criminal Court of Cook County, the said Judge granted a Hearing on a Motion filed by petitioner's Counsel to Suppress Illegally Obtained Evidence, (the same being the Ring seized from the Defendant Jennings at the time he was arrested preceding any formal complaint or warrant for search, seizure or arrest being sworn to and placed against him). *See Exhibit "A" Pages 12 to 13.* At this Hearing Det. Piotter, who seized the Ring from the person of the Defendant at the time he arrested him, testified that—*No Personal Property Was Taken in the Apartment when the Defendant Jennings Was Arrested. Nor Had He Seen Any Personal Property That Was Taken. See Exhibit "B". Pages 27 to 28.*

6. Petitioner further submits to the Honorable Court's Attention, that during the trial in which petitioner was convicted, a gentleman's diamond ring was introduced into evidence against him; that this same ring was the one seized from him at the time of his arrest by Det. Piotter; that the ring was introduced into evidence as part of the loot taken in the Barr Jewelry Robbery; that the use of petitioner's own ring as evidence against him was highly prejudicial as submitted to the Jury as loot taken in the Bar Jewelry Robbery to obtain a Verdict of Guilty; that this particular type of ring was not positively identified by Mr. Barr, so as to make it incompetent evidence; that when Det. Piotter was asked to testify about the ring during the trial, he testified that—*He Recalled All the While That a Ring Was Taken in the Apartment From the Defendant Jennings When He Was Arrested:* that because [fol. 6] the Court permitted the use of the said Ring as Evidence, being aware of the conflicting and false testimony of Det. Piotter, deprived your petitioner of a fair and impartial trial. *See Exhibit "H" Pages 30 to 31 and page 86.*

II

Petitioner's Constitutional Rights were violated under Art. 2. Sec. 10 of the Illinois State Constitution, and under the Fifth Amendment of the United States Constitution, in that he was compelled to give evidence against himself by making confessions under duress.

7. After petition was taken from the aforesaid residence at 5303 Dearborn Street, Chicago, Illinois, he was placed in a police car and after brief stops at Wabash Avenue Station and The Detective Bureau at 11th & State Street, Chicago, Illinois, petitioner was then taken to the Oak Park Police Station, Oak Park, Illinois. Enroute to the Oak Park Police Station petitioner was questioned about a jewelry store robbery that happened in Oak Park, Illinois on May 24, 1948. Petitioner was struck in the face by one of the officers, identified as Det. Piotter, when he denied knowledge of any robbery. Upon arrival at the aforesaid station near or about 5:30 A.M. of June 6, 1948, the petitioner was informed as to what specific charge he was arrested for, which was a Jewelry Store Robbery that had taken place on May 24, 1948, known as the Barr Jewelry Store located at 1031 West Lake Street, Oak Park, Illinois.

8. When your petitioner further denied any knowledge of this crime, and attempted to produce evidence that would prove beyond a reasonable doubt that he was not in Oak Park, Illinois on May 24, 1948, nor in the City of Chicago, Illinois, but was in the City of Detroit, Michigan, one of the officers conducting this interrogation struck the petitioner in the face a number of times, saying: that he would make the petitioner confess to the said robbery or kill him. The petitioner was then taken into a room for further [fol. 7] questioning, wherein he was brutally assaulted each time he professed his innocence, and was subjected to unrelenting inquisition.

9. Lt. Nester, one of the arresting officers, read to your petitioner a statement allegedly made by an Edgar Morgan, an old acquaintance of petitioner's, whom the police had earlier arrested in connection with the aforesaid robbery. This statement that was read by Lt. Nester implicated the petitioner in the Barr Jewelry Store Robbery. Petitioner told Lt. Nester that he had not seen said Edgar Morgan since March, of 1948, and that he did not participate in any robbery whatsoever in Oak Park, Illinois. The

officer then told your petitioner that when they, the Oak Park Police Officers, finished with him he would be glad to sign Morgan's Statement. Your petitioner persisted in proclaiming his innocence and was assaulted and questioned continuously for several hours in "Third Degree" fashion.

10. During the aforesaid questioning and brutality, all the other officers present, with the exception of Lt. Nester, suddenly stopped abusing and questioning your petitioner and left the office in which he was in. Shortly thereafter a man entered the office. This said man was later identified to petitioner as Mr. Sidney Barr, the owner of the jewelry store that was allegedly robbed. Lt. Nester then asked this man, Mr. Barr, if he could identify the petitioner. Mr. Barr replied that he could not, and that he had never seen the petitioner before. Lt. Nester then told Mr. Barr, that petitioner was one of the men who had robbed him, and that he, the petitioner, had confessed to the crime. Mr. Barr still insisted that he could not identify the petitioner, as he did not get a good look at the men who had robbed him, mentioning that the men who robbed him wore dark glasses. Lt. Nester then told Mr. Barr that he had better look at the petitioner good, because he, Mr. Barr, [fol. 8] would have to give positive identification when petitioner was taken to court. At Lt. Nester's insistence, Mr. Barr then said the petitioner looked like the man from the back (rear view) who was in his store at the time another man, described as Edgar Morgan by Mr. Barr, put a gun in his stomach and forced him into the rear of his store; but that he did not see petitioner's face during the course of the robbery and only received a brief glimpse of the petitioner from a rear view. At this time petitioner respectfully calls to the Honorable Court's attention; that this same Mr. Barr, as can be shown by the record, identified other suspects besides Jennings, your petitioner, and Edgar Morgan—*See Supplementary Exhibit #3, Page 15*—that Mr. Barr is incapable of identifying positively the men who allegedly robbed him in his jewelry store, as can be shown by his testimony; that at the time Mr. Barr identified petitioner in Lt. Nester's office he had not signed any statements; that the form of identification employed by Lt. Nester was contrary to police procedure in establishing positive identification, wherein a prisoner is picked out of a line of other prisoners; that the so-called identifi-

cation was made in the privacy of Lt. Nester's office with Mr. Barr and the petitioner being the only other persons present with the exception of Lt. Nester; that Lt. Nester wilfully and with malice told Mr. Barr that your petitioner had confessed to robbing him and that he, Mr. Barr, would have to identify petitioner as one of the men whom had committed the robbery of the Barr Jewelry Store.

11. After Mr. Barr had left the office of Lt. Nester, petitioner was confronted with Edgar Morgan, who identified the petitioner as the man, he, Edgar Morgan, had implicated in the statement he had made to the Oak Park Police. The aforesaid Edgar Morgan was then quickly taken away before the petitioner could question or deny the charges Edgar Morgan had made against him, or learn from Morgan the reason why he had implicated your peti-
[fol. 9] tioner in a crime of which he knew nothing about. Petitioner respectfully submits to this Honorable Court that this same Edgar Morgan testified in Court at the trial for the aforesaid crime, that the statement he made implicating the petitioner was made under extreme duress.

12. After Edgar Morgan was led from the Office of Lt. Nester, petitioner was again subjected to brutality and questioned continuously until he could no longer stand the abuse and coercion inflicted upon him by these police officers. Thus, petitioner agreed to sign anything the officers wanted him to sign to evade further mistreatment. Your petitioner then signed the statement that the said Edgar Morgan had made to the Oak Park Police implicating him.

13. Lt Nester told the other officers present that Mrs. Watson or Miss Jackson, in whose home petitioner was arrested, might send a lawyer to petitioner's aid, or have his relatives do so, and gave orders that the petitioner be taken to The River Forest Police Station, River Forest, Illinois, (another township that had no jurisdiction over the petitioner or complaint against him whatsoever) to be held there incommunicado until they, the Oak Park Police, were through with their "secret interrogation" of the petitioner. The petitioner was held in the above named police station in River Forest Illinois for two (2) days; throughout this time he was brought back and forth to the Oak Park station for further questioning and maltreatment.

14. With the Honorable Court's permission, petitioner

would like to submit to the Court's attention that as a result of these "secret interrogations" and physical brutality to his person he was in a very dazed condition and was suffering with pains in his back, stomach and a swollen and bruised face from the battering assaults inflicted by the officers of the Oak Park Police Force to extort a confession; that petitioner was not given food or medical attention, nor allowed to see friends or counsel while he was secretly held in the River Forest Police Station, River [fol. 10] Forest Illinois, where he was referred to by the River Forest Police as "the hideout prisoner"; that he did not receive any food or water at the Oak Park Police Station until after he had signed a second joint statement with Edgar Morgan; that the record shows that this second joint statement was made in the Oak Park Police Station on the night of June 6, 1948; that petitioner was brought from the River Forest Police Station back to the Oak Park Station to make this second joint statement under duress and then returned to the River Forest Police Station, River Forest Illinois for further *secret detention.*

15. On or about June 8, 1948, petitioner was brought back to the Oak Park Station from the River Forest Police Station and informed that some one had retained an attorney to act in his behalf, and that the attorney had instituted habeas corpus proceedings to have him located and released, or a charge placed against him. Forthwith a charge of armed robbery was placed against the petitioner and he was then locked up and held in Oak Park's lock-up.

16. On or about June 9, 1948, the petitioner was allowed to see Miss Evelyn Jackson and Mrs. Rosanna Watson. The Honorable Court will note that petitioner has hereto attached and made a part of this petition two (2) sworn affidavits—*Exhibits "C" and "D"*—from the above named persons in support of said allegation that officers of the Oak Park Police Station employed harsh and brutal treatment to secure petitioner's signature on statements to his purported participation as charged in Indictment Gen. No. 48-1247.

17. *Not until several days after petitioner was arrested was he taken before a justice of the peace for a hearing,* contrary to the Statutes of Illinois which call for a prompt Hearing before a magistrate. Petitioner was given a

Hearing before Justice of the Peace, Herbert Steed, in Oak Park, and was committed to the Cook County Jail until June 22, 1948. Petitioner was taken from Oak Park Illinois to the Cook County Jail, and on June 22, 1948, [fol. 11] petitioner was returned to Oak Park before Justice of the Peace, Herbert Steed again. At this said Hearing petitioner was held to the action of the Grand Jury and recommitted to the Cook County Jail on the same date. At this time petitioner respectfully submits that,—since he was arrested on Sunday June 6, 1948, he should have been taken before the said Justice of the Peace for a Hearing on Monday June 7th, 1948, which was the same date that Lt. Nester went before the aforesaid Justice of the Peace and swore out a complaint against your petitioner, as can be shown by the "Continuance Mittimus" and other records on file in the office of the Sheriff of Cook County.

18. Petitioner respectfully submits further that during the trial in which he was convicted Counsel for the defense made a motion to suppress the Statements signed by your petitioner because said statements had been obtained by methods known as the "Third Degree" by officers of the Oak Park Police. A Hearing was granted. Your petitioner testified to the brutal and inhuman treatment to which he was subjected by the aforesaid police officers and how he was secretly held in River Forest, Illinois and "shuttled over the loop", known to police parlance, "to prevent the prisoner from seeing friends, or Counsel during these several days of *secret interrogation.* Petitioner also produced witnesses who were allowed to visit him, viz., Miss Jackson and Mrs. Watson. The arresting officers "naturally denied" all of petitioner's allegations of brutality, and testified that, *They Had No Knowledge of Petitioner Being Taken to the River Forest Police Station and Held Incommunicado,* as can be shown by the record of their testimony. Officer Ayers, of the Oak Park Police Force, a witness for the State, so to speak—let the cat out of the bag—and admitted that the petitioner was taken to the River Forest Police Station and held there on orders re- [fol. 12] ceived from detectives of the Oak Park Police Station and *That Petitioner Was Brought Back and Forth from River Forest to Oak Park.* See Supplementary Exhibit #2 (part two) Pages 6, 7 & 8.

19. The Motion to quash the statements made by petitioner and signed by him were overruled and allowed to be entered

as evidence against him notwithstanding they had been made under extreme duress.

III

Petitioner's Constitutional Rights were violated under Art. 2. Sec. 9, of the Illinois State Constitution and under the Sixth Amendment of the United States Constitution, in that he was not given a Fair and Speedy Trial.

20. Petitioner respectfully submits the following as his allegations that he did not receive a Fair and Impartial Trial under the 6th Amendment, which also is a denial of the 14th Amendment of the United States Constitution, which is Due Process of Law.

1. The verdict was not sustained by evidence of the defendant's guilt beyond a reasonable doubt.

2. The evidence introduced by the People was insufficient to support the verdict of the jury.

3. The State's Attorney during the trial and argument of the case was guilty of prejudicial misconduct and abuse of the privilege of argument as shown by the record.

4. The defendant was convicted on testimony known to be false by the State's Attorney and Court.

5. The police were guilty of using perjury known to the prosecution to aid in the conviction of the defendant.

6. The Court allowed arbitrary and oppressive delays to prevent the defendant from receiving a Speedy Trial which he Demanded, as clearly shown by the records.

7. The Court was without jurisdiction to hear the charge against the defendant since he was not tried within four months, which delay was not caused through any fault on his part.

[fol. 13] 21. At this time your petitioner respectfully points out for the Honorable Court's consideration, that he was not given a Speedy Trial, as guaranteed by the Constitution of Illinois and the United States, and for his reasons therefore submits the following allegations and facts in support thereof with his proof; that Counsel for the Defendant Jennings on December 13, 1948 invoked the statute enacted by the Illinois Legislature to give effect to the

Constitutional guarantee of a Speedy Trial; that the Defendant Jennings had not caused any delay within a "four month period" and had been awaiting trial over Four Months; *that the Defendant Jennings through his Counsel had Demanded Trial on November 4th, 1948;* that the Defendant Jennings' Motion to Discharge For Want of Prosecution was denied on December 13, 1948 by Hon. Alan E. Ashcraft, Jr., *on the mere technicality argued by the State's Attorney that he, Defendant Jennings, the same being your petitioner, had had a "Hearing to Suppress Evidence" on August 13, 1948; that* said motion to suppress evidence was a pretrial or preliminary motion to be heard and ruled on AT THE COURT'S CONVENIENCE AND DISCRETION any time before trial actually commences; that the Common-Law Record attached hereto Marked Exhibit "A" shows from August 13, 1948 to December 23, 1948, that no delay whatsoever was caused by the Defendant Jennings, your petitioner; that the delays in the case being brought to trial were caused by the Court and State's Attorney; that the delays and continuances at the Court's discretion and State's motions were arbitrary and oppressive; that the Defendant Jennings suffered harassment and anxiety attending the criminal prosecution in which he was convicted and loss a valuable witness as a result from the long delay in being brought to trial. *See Exhibit "E."*

22. Petitioner was arraigned before Hon. Chief Justice Cornelius J. Harrington on July 6, 1948 and it was ordered [fol. 14] by the Court that the cause be and the same was assigned to the Hon. Alan E. Ashcraft, Jr. On the same date, July 6, 1948, petitioner was taken to the bullpen or safety cage for prisoners adjacent to the court room of the Hon. Alan E. Ashcraft, Jr., and there the petitioner remained while his Counsel allegedly went before Judge Ashcraft and the case was set for trial on July 28, 1948. Petitioner was informed of his trial date set for July 28, 1948, by Judge Ashcraft's Bailiff and at no time on July 6, 1948, did the Defendant Jennings appear in the Court Room of the Hon. Alan E. Ashcraft in his own proper person, *which was a denial of his constitutional right to be present at all of the proceedings of his trial from his arraignment to his final sentence or discharge.* Petitioner also submits that there is no transcript of proceedings recorded by the Court Reporter who was on duty on July 6, 1948, in the Court Room

of the Hon. Alan E. Ashcraft, Jr., to show that petitioner appeared in Open Court on that date before the aforesaid Judge.

23. On July 28, 1948, the Common-Law Record, *Exhibit "A"—Page 10* shows that the cause was continued on express consent and agreement between the State's Attorney and the said Defendant and his Counsel to August 13, 1948. On this same date Judge Ashcraft was hearing a jury trial and could not hear the Defendant Jennings' trial. See *Supplementary Exhibit #1 (part three) Pages 1 to 3.*

24. On August 13, 1948, Hon. Judge Ashcraft was hearing another trial but granted Counsel for the Defendant Jennings a Hearing to Suppress Evidence during a recess period of the trial he was hearing on the same day. The Motion to Suppress on discretion of the Court was continued until August 26, 1948, as shown by the Common-Law Record. See *Exhibit "A" Pages 11 to 14;* Also see *Supplementary Exhibit #1—Pages 1 to 5.*

25. On August 26, 1948, the cause for trial was on discretion of the Court continued until October 4, 1948, as shown by the record. See *Exhibit "A" Page 15;* Also see *Supplementary Exhibit #1 (part three) Pages 4 to 9.*

[fol. 15] 26. On October 4, 1948, petitioner was again ready to stand trial, his witnesses present. But not any of the State's subpoenaed witnesses appeared in Court on this date. Counsel for said Defendant objected to this contemptuous and oppressive delay. On motion of the State's Attorney the trial was continued by the Court to November 4, 1948. See *Exhibit "A" Page 16;* Also see *Supplementary Exhibit #1 (part two) Pages 1 to 9.*

27. On November 4, 1948, petitioner was again ready to stand trial, his witnesses present. The State's Attorney orally moved the Court to continue the cause in order to subpoena some so-called witnesses from Cleveland, Ohio. Counsel on behalf of said Defendant objected and "Demanded Trial" at the present date and term of court. Counsel also requested the Court to order the State's Attorney to file an affidavit as to who these witnesses were and what they intended to testify to, as provided by law. The Court ignored Counsel's request and ordered the cause continued on the State's Attorney's oral motion to December 13, 1948. See *Exhibit "A" Page 17;* Also see *Supplementary Exhibit #1 (part two) Pages 11 to 13.*

28. Petitioner at this time would like to submit to this Honorable Court that No Witnesses on behalf of the State prosecution were subpoenaed from Cleveland, Ohio, *nor is there any record of any State Witnesses being subpoenaed from Cleveland, Ohio.* Petitioner further submits that this delay was oppressive and a stall for time to try and manufacture evidence on behalf of the State's Prosecution to aid in the conviction of your petitioner.

On December 13, 1948, Counsel for said Defendant Jennings moved the Court to Discharge the Defendant in accordance with the law, pointing out that he had been awaiting trial over Four Months and during that time had not caused any delay on his part, as clearly shown by the records. See *Exhibit "A" Page 18;* Also see *Supplementary Exhibit #1 (part two) Pages 15 to 23.* The Court denied Counsel's motion to Discharge For Want Of Prosecution on the aforesaid argument of the State's Attorney [fol. 16] that the Defendant had had a Hearing to Suppress Evidence on August 13, 1948. The Court before overruling the Motion to Discharge mentioned that—No Court would uphold such a technicality as holding a person in jail indefinitely on a motion to suppress. The State's Attorney Again asked that the trial be continued so that the prosecuting witness, Mr. Barr, could go to Cleveland, Ohio, to appear at another trial which had not been pending as long as petitioner's trial in the Cook County Criminal Court, Illinois. The Court on Motion of the State's Attorney Again continued the cause to December 23, 1948, over the objections of Counsel for the Defendant. Petitioner respectfully submits to the Court's attention that—"the Court did not appear certain before denying the Motion to Discharge, as the Honorable Court seemingly accepted the decision of the prosecuting attorney. See *Supplementary Exhibit #1 (part two) at page 23.*

29. *Petitioner Respectfully Submits the Following Summary of the Facts in Conjunction With the Foregoing Paragraphs:*

1. The State at no time from July 6, 1948 (the date of arraignment) to December 23, 1948 (the date the trial began) was ready to proceed with the trial.

2. That all of the continuances requested by the State's Attorney were oppressive and a Stall for time to try to manufacture evidence from an anticipated

"unfavorable outcome" of a trial pending in Cleveland, Ohio, which the State's Attorney had hopes of connecting with the Defendant, or his co-defendant Edgar Morgan.

3. That the trial in Cleveland, Ohio did not terminate when Mr. Barr made his alleged trip to Cleveland, Ohio. Moreover, it did not commence until several weeks after your petitioner had been convicted.

4. That because of the aforementioned arbitrary and oppressive delays, your petitioner loss a valuable witness. See *Exhibit "E"*.

5. That petitioner had not been admitted to bail, had been in confinement constantly in the County Jail of Cook County for over "Six Months" and had not caused any delay within a Four Month Period, dating from August 13, 1948 to December 13, 1948, as clearly shown by the Common-Law Record, and the Transcript of Proceedings made a part of this petition as Certified Exhibits. It was the duty of the trial court to proceed with the trial of the defendant Jennings on December 13, 1948, or discharge him from custody.

[fol. 17] 6. That petitioner Demanded a Speedy Trial and Objected to the Arbitrary and Oppressive delays caused by the Court and State's Attorney, as clearly shown by the records.

7. That because your petitioner was not tried within four months the Court was without jurisdiction under the statute to accept any plea or enter any judgment against him.

IV

Petitioner's Constitutional Rights were violated under Art. 2, Sec. 2, of the Illinois State Constitution and under the Fourteenth Amendment of the United States Constitution, in that he was Deprived of His Liberty and Property Without Due Process of Law and Denied the Equal Protection of the Laws.

30. It can be shown beyond a reasonable doubt in the transcript of Proceedings, submitted on the Witness Stand by witnesses for your petitioner at his trial, and by other evidence, that the Defendant Jennings was a tenant of Mr. Jimmy Hughes in Detroit, Michigan from May 22, 1948 to June 1, 1948, and the activity of the Defendant while in Detroit, Michigan shows that it would have been

physically impossible for the Defendant Jennings to have been in Chicago, or in Oak Park, Illinois at the time of the Barr Jewelry Robbery as alleged, and that the Defendant Jennings was definitely *Not Convicted Beyond a Reasonable Doubt;* that the only material evidence used to convict your petitioner was that of the illegally seized ring, the same being his own personal property, and his statement secured by the Police of Oak Park during coercion and the Third Degree to which they resorted; that evidence used against the co-defendant Morgan was highly prejudicial to the Defendant Jennings, because the State's Attorney, by misconduct resorted to every questionable method to connect said evidence with the Defendant Jennings; that Mr. Jimmy Hughes came from Detroit, Michigan and testified in behalf of your petitioner; that he testified that your petitioner was a Roomer at his residence from May 22nd to [fol. 18] June 1st, 1948, and specifically testified that your petitioner was with him in Detroit, Michigan about the time of the alleged Barr Jewelry Robbery on May 24, 1948; that Mr. Hughes identified two (2) rent receipts that he filled out and signed when the Defendant Jennings paid his rent while Mr. Hughes' Roomer in Detroit, Michigan; that the two (2) rent receipts were offered and received into evidence; that Mr. Hughes identified a Telegram Money Order he had received at his home in Detroit, Michigan in care of him for the Defendant Jennings on June 1, 1948; that the telegram money order was offered and received into evidence; that on cross examination by the State's Attorney, no discrepancies were found in the examination by the State's Attorney in the testimony of Mr. Hughes. See *Supplementary Exhibit #2, Pages 1 to 47 respectively.*

31. Miss Evelyn Jackson testified that she knew it to be a fact, that the Defendant Jennings was in Detroit, Michigan from May 22, to June 1, 1948; that she testified at your petitioner's trial that she accompanied the Defendant Jennings to the La Salle Street Station, Chicago, Illinois when he entrained for Detroit, Michigan on May 22, 1948; that she sent the telegram money order to the Defendant Jennings on June 1, 1948, and a receipt which she received upon payment of the money for the telegram money order here in Chicago, was introduced and received into evidence in behalf of the Defendant Jennings.

32. Petitioner loss a valuable witness who would have

testified in his behalf that he was in Detroit, Michigan on May 24, 1948. Petitioner loss this witness because of the long, arbitrary and oppressive delays on the part of the Court and State's Attorney, as heretofore pointed out and verified by *Exhibit "E"*. This aforesaid witness is now ready to testify in behalf of your petitioner when this cause is brought before the Bar of this Honorable Court.

[fol. 19] 33. Petitioner has another witness in Mrs. Nettie Smith willing to testify to the innocence of your petitioner. See *Exhibit "F"*. May the Honorable Court accept the two above said affidavits as prima facie evidence in support of petitioner's allegations.

34. Your petitioner attaches to and makes a part of this petition a sworn affidavit of the Taxi Driver, who drove the two men who allegedly committed the robbery of the Barr Jewelry Store from Chicago, Illinois to Oak Park, Illinois on May 24, 1948. The Taxi Driver further says upon oath that petitioner Jennings is not one of these two men aforesaid. Your petitioner respectfully submits *Exhibit "G"*, as additional prima facie evidence of his innocence. See *Exhibit "G"*.

35. Petitioner respectfully submits to This Honorable Court that:

(1) The State's Attorney during the trial and argument of the case was guilty of prejudicial misconduct and abuse of the privilege of argument to the prejudice of the defendant Jennings as can be shown by the records in Cause 48-1247.

(2) The petitioner was denied due process of law and was convicted with the use of False Testimony willfully, corruptly and falsely given to mislead the Court by a witness for the State Det. Edward Piotter. And the State through her responsible officials knowingly used the false testimony and aided in the perpetration of a fraud upon the Court to the great prejudice of the defendant, in that it deprived him of due process of law and the equal protection of the law.

(3) The police were guilty of using perjury known to the prosecution and Court to aid in the conviction of the Defendant Jennings, as can be shown by the transcript of Proceedings had in Cause 48-1247.

During the trial the State's Attorney in reading the statements to the Jury made by the Defendant Jennings under duress, told the Jury, that during their absence from the Court Room Judge Ashcraft had conducted a hearing to determine if these statements were admissible as evidence *and Had Ruled That They Were All Right.* Petitioner respectfully points out that this remark by the State's Attorney was so grossly prejudicial that it deprived him of Due Process of Law, and a Fair Trial. As a result of the aforesaid prejudicial remark made by the State's Attorney, [fol. 20] Counsel for the Defendant Demanded a Mistrial. Said Motion was overruled.

36. Before the Jury in closing arguments the State's Attorney made several highly prejudicial and inflammatory remarks to influence the Jury's verdict. The State's Attorney called the Defendant's witness, Mr. Hughes, a *perjurer* with not the slightest thread of evidence to substantiate his prejudicial remark. On cross examination the State's Attorney could not find any falsification or discrepansies in Mr. Hughes' testimony what-so-ever, as can be shown by the record of Mr. Hughes' testimony. See *Supplementary Exhibit #2, Pages 1 to 47 respectively.*

37. Detective Piotter used perjury to have the Defendant Jennings' Motion to Suppress Denied by testifying that *No Personal Property Was Taken in the Apartment When He Was Arrested,* as heretofore pointed out *Exhibit "B"—Pages 27 to 28.* When the aforesaid Ring was introduced against the Defendant Jennings, (by the State's Attorney who was aware of Det. Piotter's previous testimony during the motion to suppress) this same Det. Piotter testified, that *He Recalled All the While That a Ring Was Taken in the Apartment from the Defendant When He Was Arrested,* and this same Det. Piotter went so far as to pick out the said ring from a group of other jewelry, as can be shown by the record. See *Exhibit "H"—Pages 30 to 31 and page 86.* Petitioner further submits to the Honorable Court's attention, that by having his Motion to Suppress denied on False Testimony deprived him of Due Process of Law and Equal Protection of the Law, as the trial Court rendered an opinion on a similar motion filed on behalf of the Co-defendant Morgan. See *Supplementary Exhibit #1 (part two) Pages 1 to 7.* Petitioner did not even receive the benefit of any opinion by the trial court as a result of the aforesaid perjury

by Det. Piotter. See *Supplementary Exhibit #1 (part three), Page 6:*

"The Court: As far as Jennings is concerned, there doesn't seem to be anything to suppress."

[fol. 21] For further False Statements and perjury willfully and corruptly given to mislead the Court and Jury to the great prejudice of the Defendant Jennings, your petitioner respectfully ask- that this Honorable Court take notice of the following discrepancies and "false statements" given by Det. Piotter on the Witness Stand:

On *Page 81 and 82 of Exhibit "H"*. Det. Piotter said that petitioner commented while in the bath room that he was going to jump out of the window if he could have gotten dressed in time.

On *Page 31 of Exhibit "H"*, Det. Piotter under direct examination, testified that — petitioner gave no explanation for being in the bath room.

On *Page 27 of Exhibit "B"*. Det. Piotter testified that he told Mrs. Watson that they were looking for a fellow by the name of Jennings.

On *Page 79 of Exhibit "H"*. Det. Piotter testified that he only knew the petitioner by the name of Blackie.

On *Page 82 of Exhibit "H"*. Det. Piotter testified that he told petitioner "Police officers!", etc., before he opened the bathroom door.

On *Page 27 of Exhibit "B"*. Det. Piotter testified that he and the other officers noticed the bathroom door closed and opened it.

38. The petitioner was further Deprived of his own private property, viz., The Ring, taken illegally by the police and his liberty, also being his property, without Due Process of Law for the reasons stated herein this petition. The petitioner was Denied the Equal Protection of the Law for the reasons stated herein pertaining thereto in this petition.

Wherefore, your petitioner respectfully prays, to be brought before the Bar of this Honorable Court in his own proper person for a full and complete inquiry into the merits of his allegations, and that he may have such relief in the premises, as provided by law and to this Honorable

Court may seem meet and just; for which your petitioner will ever pray, etc.

[fol. 22] And to any adverse ruling upon this petition, by this Honorable Court, your petitioner in his own proper person, now here respectfully duly excepts. All of which is,

Respectfully submitted, Talbot Jennings, Petitioner Pro se.

STATE OF ILLINOIS,
County of Will, ss:

Talbot Jennings, being first duly sworn, on oath says; that he is the petitioner in the above captioned cause of action; that he has not the funds, property or other means with which to pay the cost of these proceedings; that by virtue of his poverty he is unable to procure counsel; that he has read and written the above and foregoing amended petition by him subscribed and knows the contents thereof, and that the statements and averments therein made are each and everyone of them true to the best of his knowledge and belief; that the exhibits attached to said petition are perfect and complete copies of the Common Law Record and portions of the Transcript of Proceedings as they appear in the records of this Court, and the Notes of the Official Shorthand Reporter as received by me from the Chief Clerk of the Cook County Criminal Court and from the Office of the Official Shorthand Reporters of said Court.

Talbot Jennings, Affiant.

Subscribed and sworn to before me this 12 day of September, A. D. 1950. Leo H. Gambrel, Notary Public. My Commission Expires December 2, A. D. 1953. ("Copy" Seal.)

[fol. 23] EXHIBIT A

IN THE CRIMINAL COURT OF COOK COUNTY

General No. 48-1247

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

TALBOT JENNINGS (Impleaded)

[fol. 24] MINUTE ENTRY—June 7, 1948

And afterwards, to wit: on the Seventh day of June in the year last aforesaid, the Sheriff of Cook County returned into Court the Venire Facias heretofore issued for a Grand Jury for this term and returnable to-day, by which it appears that the fol-owing named persons have been duly summoned to appear this day and serve as Grand Jurors at the present term of this Court:

Charles Carey
Robert L. Burke
Adolph F. Stark
Arthur A. Wallace
Gordon H. Gannett, Jr.
Joseph Morey
Donald M. Kennedy
Albert Roy Burckhalter
Mary H. Ackerman
Marshall C. Shields
Elsie A. Douglass
Harold B. McEldowney
Margaret C. Spurgin
Sarah Judson
Andrew V. Gallagher
John L. Monier
William C. Ewert
Paul T. Cronin
Mathias J. Kately
Andrew Kowal
Joseph L. Fisher
Harry Fein
Wirta Wamble

who answered to their respective names.

The panel of Grand Jurors being now filled, the Court having now here appointed Charles Carey foreman of said Grand Jury, the Grand Jurors aforesaid were duly sworn and charged by the Court, and thereupon retired to consider their presentments.

[fol. 25] [Caption omitted]

MINUTE ENTRY—June 29, 1948

The Grand Jurors returned into open Court and made an presentment endorsed "A True Bill" in the following entitled cause, to wit:

Indictment for Robbery, Etc.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

TALBOT JENNINGS (Impleaded)

Bail—$10,000.00 each.

[fol. 26] Of the June Term of the Criminal Court of Cook County, in said County and State in the Year of our Lord, one thousand nine hundred and forty eight.

STATE OF ILLINOIS,
County of Cook, ss:

Count 1. The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that one Arthur Smith, Junior one Talbot Jennings and one Edgar Donald Morgan, late of the County of Cook, on the twenty fourth day of May in the year of our Lord one thousand nine hundred and forty eight, in said County of Cook, in the State of Illinois aforesaid feloniously and violently made an assault in and upon one Sidney L. Barr then and there being, and then and there put said Sidney L. Barr in bodily fear and danger of his life, and then and there feloniously and violently, by force and intimidation, robbed, stole, took and carried away from the person and against the will of said Sidney L. Barr one hundred current United States of America Treasury Notes of the denomination of one hundred dollars, of the value of one hundred dollars each; two hundred current United States of America Treasury Notes of the denomination of fifty dollars, of the value of fifty dollars each; one hundred current United States of America

Treasury Notes of the denomination of twenty dollars, of the value of twenty dollars each; one hundred current United States of America Treasury Notes of the denomination of ten dollars, of the value of ten dollars each; one hundred current United States of America Treasury Notes of the denomination of five dollars, of the value of five dollars each; two hundred current United States of America Treasury Notes of the denomination of two dollars, of the value of two dollars each; five hundred current Silver Certificates issued by the Treasury of the United States of America, of the denomination of one dollar, of the value of one dollar each; sundry current Bank Bills, commonly called National Currency, issued by certain National Banks, the Banks of issue being to said jurors unknown; of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; sundry current Bank Bills, commonly called Greenbacks, issued by the Treasury of the United States of America, of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; sundry current Federal Reserve Notes issued by certain Federal Reserve Banks of the United States of America, the Banks of issue being to said jurors unknown, of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; sundry current Federal Reserve Bank Notes issued by certain Federal Reserve Banks of the United States of America, the Banks of issue being to said jurors unknown, of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; five hundred pieces of silver current coin of the United States of America, called one dollar, of the value of one dollar each; five hundred pieces of silver current coin of the United States of America, called half dollar; of the value of fifty cents each; five hundred pieces of silver current coin of the United States of America, called quarter dollar; of the value of twenty-five cents each; five hundred pieces of silver current coin of the United States of America, called one dime, of the value of ten cents each; five hundred pieces of silver current coin of the United States of America, called half

dime of the value of five cents each; five hundred pieces of nickel current coin of the United States of America, called five cent of the value of five cents each; five hundred pieces of copper current coin of the United States of America, called one cent, of the value of one cent each; one hundred pieces of gold current coin of the United States of America, called twenty dollars, of the value of twenty dollars each; one hundred pieces of gold current coin of the United States of America, called ten dollars, of the value of ten dollars each; one hundred pieces of gold current coin of the United States of America, called five dollars, of the value of five dollars each; one hundred pieces of gold current coin of the United States of America, called two dollars and fifty cents, of the value of two dollars and fifty cents each; one hundred pieces of gold current coin of the United States of America, called one dollar, of the value of one dollar each; one hundred watches, each of the value of twenty five dollars lawful money of the United States of America; one hundred and fifty rings, each of the value of fifty dollars lawful money of the United States of America; ninety rings, each of the value of six dollars lawful money of the United States of America; one fountain pen of the value of ten dollars lawful money of the United States of America, and one pencil of the value of five dollars lawful money of the United States of America, of the money, personal goods and property of said Sidney L. Barr; and the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that said Arthur Smith, Junior said Talbot Jennings and said Edgar Donald Morgan then and there were armed with a certain dangerous weapon to-wit, a certain pistol contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

[fol. 27] Count 2. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oath aforesaid, do further present that one Arthur Smith, Junior one Talbot Jennings and one Edgar Donald Morgan, late of the County of Cook, on the twenty fourth day of May in the year of our Lord one thousand nine hundred and forty eight, in said county of Cook, in the State of Illinois aforesaid, feloniously and violently made an assault in and upon one Sidney L. Barr then and there being, and then and

there put said Sidney L. Barr in bodily fear and danger of his life, and then and there feloniously and violently, by force and intimidation, robbed, stole, took, and carried away from the person and against the will of said Sidney L. Barr one hundred current United States of America Treasury Notes of the denomination of one hundred dollars, of the value of one hundred dollars each; two hundred current United States of America Treasury Notes of the denomination of fifty dollars, of the value of fifty dollars each; one hundred current United States of America Treasury Notes of the denomination of twenty dollars, of the value of twenty dollars each; one hundred current United States of America Treasury Notes of the denomination of ten dollars, of the value of ten dollars each; one hundred current United States of America Treasury Notes of the denomination of five dollars, of the value of five dollars each; two hundred current United States of America Treasury Notes of the denomination of two dollars, of the value of two dollars each; five hundred current Silver Certificates issued by the Treasury of the United States of America, of the denomination of one dollar, of the value of one dollar each; sundry current Bank Bills, commonly called National Currency, issued by certain National Banks, the Banks of issue being to said jurors unknown, of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; sundry current Bank Bills, commonly called Greenbacks, issued by the Treasury of the United States of America, of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; sundry current Federal Reserve Notes issued by certain Federal Reserve Banks of the United States of America, the Banks of issue being to said jurors unknown, of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; sundry current Federal Reserve Bank Notes issued by certain Federal Reserve Banks of the United States of America, the Banks of issue being to said jurors unknown, of divers denominations, the denominations being to said jurors unknown, of the amount and value in all of one hundred and sixty five dollars; five hundred pieces of silver current coin of the United States of America, called one dollar, of the

value of one dollar each; five hundred pieces of silver current coin of the United States of America, called half dollar, of the value of fifty cents each; five hundred pieces of silver current coin of the United States of America, called quarter dollar, of the value of twenty-five cents each; five hundred pieces of silver current coin of the United States of America, called one dime, of the value of ten cents each; five hundred pieces of silver current coin of the United States of America, called half dime, of the value of five cents each; five hundred pieces of nickel current coin of the United States of America, called five cent, of the value of five cents each; five hundred pieces of copper current coin of the United States of America, called one cent, of the value of one cent each; one hundred pieces of gold current coin of the United States of America, called twenty dollars, of the value of twenty dollars each; one hundred pieces of gold current coin of the United States of America, called ten dollars, of the value of ten dollars each; one hundred pieces of gold current coin of the United States of America, called five dollars, of the value of five dollars each; one hundred pieces of gold current coin of the United States of America, called two dollars and fifty cents, of the value of two dollars and fifty cents each; one hundred pieces of gold current coin of the United States of America, called one dollar, of the value of one dollar each; one hundred watches, each of the value of twenty five dollars lawful money of the United States of America; one hundred and fifty rings, each of the value of fifty dollars lawful money of the United States of America; ninety rings, each of the value of six dollars lawful money of the United States of America; one fountain pen of the value of ten dollars lawful money of the United States of America; and one pencil of the value of five dollars lawful money of the United States of America, of the money, personal goods and property of said Sidney L. Barr contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

William J. Tuohy, State's Attorney.

[fol. 28] [Endorsement:] G. J. No. 66; General No. 48-1247. Criminal Court of Cook County, June Term, A. D. 1948. The People of the State of Illinois vs. Arthur Smith, Junior, et al. Indictment for Robbery, Etc. A True Bill. Charles Carey, Foreman of the Grand Jury. Witnesses:

Sidney L. Barr, Raymond Hutchinson. Filed June 29, 1948. Vincent J. Poklacki, Clerk. Bail, $10,000.00 each.

Which indictment is then and there filed in the Office of the Clerk of the Criminal Court of Cook County.

[fol. 29] [Caption omitted]

MINUTE ENTRY—July 2, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

It is ordered by the Court that this cause be and the same is hereby continued to July 6th, A. D. 1948 without subpoenas.

[fol. 30] [Caption omitted]

MINUTE ENTRY—July 6, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And he having been furnished with a copy of the indictment in this cause, and lists of the names of the witnesses and jurors, and he being now here duly arraigned in open court and forthwith demanded of and concerning the crime alleged against him in said indictment how he will acquit himself thereof, for a plea in that behalf says that he is Not Guilty in manner and form as charged therein, and of this he puts himself upon the Country and the said People do the like.

It is ordered by the Court that this cause be and the [fol. 31] same is hereby assigned to the Honorable Alan E. Ashcraft, Jr., Judge of the Superior Court of Cook County and Ex-Officio Judge of the Criminal Court of Cook County.

[fol. 32] [Caption omitted]

MINUTE ENTRY—July 6, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

On motion of Counsel for said Defendant, it is ordered by the Court that this cause be and the same is hereby continued to July 28th, A. D. 1948 with subpoenas.

[fol. 33] [Caption omitted]

MINUTE ENTRY—July 28, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And by express consent and agreement between the State's Attorney and the said Defendant and his Counsel now here given and made in open Court, that this cause be and the same is hereby continued to August 13th, A. D. 1948 without subpoenas.

[fol. 34] [Caption omitted]

MINUTE ENTRY—August 13, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

Counsel for said Defendant now here moves the Court by written Motion to Suppress Evidence, which is in words and figures following to-wit:

[fol. 35] [Title omitted]

MOTION TO SUPPRESS—Filed August 13, 1948

And now comes the defendant, Talbot Jennings, in his own person and by his attorney, Howard D. Geter, to suppress the evidence obtained by the illegal search of his person and premises, located in the City of Chicago, County of Cook and the State of Illinois, by certain police officers of the Village of Oak Park and the City of Chicago, Illinois, on or about the 6th day of June, 1948, the evidence being obtained by reason thereof being as follows:

One (1) gold ring and certain personal property, the exact description of which is unknown to the petitioner, which the said police officers intend to use in the above entitled cause as evidence against the petitioner.

And the said defendant shows the following reasons for the suppressing of said evidence:

1. That at the time the police officers aforesaid entered his premises, they did so without any warrant and legal authority whatsoever, and in direct violation of his constitutional right.

2. That at the time that the said police officers entered his premises he was not in the violation of any law nor was he guilty of any violation of any law.

3. That the police officers were not at the time of their illegal entry in search of his premises in the pursuit of a felon nor did the police officers have any right to suspect that the said defendant was guilty of the violation of any law.

Wherefore, the defendant asks:

[fol. 36] 1. That the Court enter an Order suppressing the evidence mentioned herein which was illegally obtained by the said police officers.

2. That the Court enter a further Order directing said police officers to return said property to the defendant which was taken from him by the illegal search of his premises and person.

(S.) Talbot Jennings.

Duly sworn to by Talbot Jennings. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 37] And the Court hearing the Motion to Suppress Evidence in part.

And it is ordered by the Court that the hearing on Motion to Suppress Evidence be and the same is hereby continued to August 25th, A. D. 1948 without subpoenas.

[fol. 38] [Caption omitted].

MOTION TO SUPPRESS EVIDENCE OVERRULED—August 26, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

Motion to Suppress Evidence heretofore entered herein. Hearing on Motions.

And the Court hearing Counsel in support of the Motion to Suppress Evidence, heretofore entered herein, as well as in opposition thereto, and being fully advised in the premises, doth overrule said motion and orders that said Motion to Suppress Evidence, heretofore entered herein, in this cause be and the same is hereby overruled accordingly.

It is ordered by the Court that this cause be and the same is hereby continued to October 4th, A. D. 1948 with subpoenas.

[fol. 39] [Caption omitted].

MINUTE ENTRY—October 4, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

On motion of State's Attorney, it is ordered by the Court that this cause be and the same is hereby continued to November 4th, A. D. 1948 with subpoenas.

[fol. 40] [Caption omitted]

MINUTE ENTRY—November 4, 1948

This day come the said People by William J. Tuohy, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

On motion of State's Attorney, it is ordered by the Court that this cause be and the same is hereby continued to December 13th, A. D. 1948 with subpoenas.

And the said Defendant by his Counsel now here demands trial at the present term of this Court.

[fol. 41] [Caption omitted]

MOTION TO DISCHARGE DEFENDANT OVERRULED—December 13, 1948

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

Counsel for said Defendant now here moves the Court to discharge said Defendant.

And the Court hearing Counsel in support of said motion as well as in opposition thereto and being fully advised in the premises doth overrule said motion and orders that said motion to discharge be and the same is hereby overruled accordingly.

On motion of State's Attorney, it is ordered by the Court that this cause be and the same is hereby continued to December 23rd, A. D. 1948 with subpoenas.

[fol. 42] [Caption omitted]

MINUTE ENTRY—December 23, 1948

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

Plea of Not Guilty heretofore entered to the indictment in this cause.

And now issue being joined it is ordered that Jury come.

And Counsel now proceed to select a Jury for the trial in this cause. And Sylvia M. Maloum, Robert W. Vanderplow, Lillian A. Sauer, Alice J. Pritchard, having been accepted. were duly sworn.

And by express consent and agreement between the State's Attorney and the said Defendant and his Counsel now here given and made in open Court, it is ordered that the further examination of Jurors and consideration of this cause be and the same is hereby continued to December 27th, A. D. 1948.

[fol. 43] [Caption omitted]

MINUTE ENTRY—December 27, 1948

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Four (4) Jurors heretofore accepted and prospective Jurors.

And Counsel now further proceed to select a Jury for the trial of this cause. And Paul Parise, Paul W. Moeller, Libby E. Danek, Catherine Albinger, Charles E. Stark, Henry J. Tobin, Phillip M. Piechocki, Epol Pivaronas, having been accepted were duly sworn, together with the

Four (4) Jurors heretofore accepted and sworn making a complete panel.

And the Jury hearing the opening statements of the State's Attorney.

Counsel for said Defendant waives opening statements.

And Counsel for said Defendant now here moves the Court to exclude witnesses.

And the Court hearing Counsel in support of said motion as well as in opposition thereto, and being fully advised in the premises, doth sustain said motion and orders that said motion to exclude witnesses be and the same is hereby sustained accordingly.

And the Jury hearing the testimony of witnesses.

It is ordered by the Court that this cause be and the same is hereby continued until tomorrow, December 28th, A. D. 1948 at 10:00 A. M.

[fol. 44] [Caption omitted]

MINUTE ENTRY—December 28, 1948

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the further testimony of witnesses.

And it is ordered by the Court that this cause be and the same is hereby continued until tomorrow, December 29th, A. D. 1948.

[fol. 45] [Caption omitted]

MINUTE ENTRY—December 29, 1948

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the further testimony of witnesses.

And it is ordered by the Court that this cause be and the same is hereby continued until tomorrow, December 30th, A. D. 1948 at 10:00 A. M.

[fol. 46] [Caption omitted]

MINUTE ENTRY—December 30, 1948

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the further testimony of witnesses.

And, by express consent and agreement between the State's Attorney and the said Defendant and his Counsel now here given and made in open Court, it is ordered by the Court that this cause be and the same is hereby continued until January 3, A. D. 1949 at 11:00 A. M.

[fol. 47] [Caption omitted]

MINUTE ENTRY—January 3, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the further testimony of witnesses.

It is ordered by the Court that this cause be and the same is continued until tomorrow, January 4th, A. D. 1949 at 10:00 A. M.

[fol. 48] [Caption omitted]

MINUTE ENTRY—January 4, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by this Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the further testimony of witnesses.

It is ordered by the Court that this cause be and the same is hereby continued until tomorrow, January 5th, A. D. 1949 at 10:00 A. M.

[fol. 49] [Caption omitted]

MOTION FOR INSTRUCTED VERDICT OVERRULED—January 5, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the further testimony of witnesses.

Age of Defendant Talbot Jennings, 26 years.

Counsel for said Defendant now here moves the Court to instruct the Jury to find the said Defendant Not Guilty in this cause.

And the Court hearing Counsel in support of said motion as well as in opposition thereto and being fully advised in the premises, doth overrule said motion and orders that said motion be and the same is hereby overruled accordingly.

And the aforesaid Jury hearing the further testimony of witnesses.

It is ordered by the Court that this cause be and the same is hereby continued until tomorrow, January 5th, A. D. 1949, at 10:00 A. M.

[fol. 50] [Caption omitted]

MINUTE ENTRY—January 6, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the further testimony of witnesses.

It is ordered by the Court that this cause be and the same is hereby continued until tomorrow, January 7th, A. D. 1949 at 10:00 A. M.

[fol. 51] [Caption omitted]

MINUTE ENTRY—January 7, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid and they hearing the further testimony of witnesses.

Counsel for said Defendant now here moves the Court for Exhibits to be given to Jury while considering of their verdict.

And the Court hearing Counsel in support of said motion as well as in opposition thereto and being fully advised in the premises doth sustain said motion and orders that said motion be and the same is hereby sustained accordingly.

Jury returns into open Court and for their verdict say:

> "We, the Jury, find the Defendant Talbot Jennings, Guilty of Robbery in manner and form as charged in the indictment. And we further find from the evidence that at the time of the commission of said Robbery, the defendant Talbot Jennings, was armed with a dangerous weapon, to wit: with a pistol. And we further find from the evidence that the said Defendant is now about the age of 26 years."

It is ordered by the Court that the said Defendant be allowed ten (10) days time in which to prepare and file his written Motion for a New Trial and written Motion in Arrest of Judgment in this cause.

On motion of Counsel for said Defendant, it is ordered by the Court that the Hearing on the Motions be and the same is hereby continued until January 28th, A. D. 1949.

[fol. 55] [Caption omitted]

MINUTE ENTRY—January 28, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

Counsel for said Defendant now here moves the Court by written Motion for a New Trial in this cause, which said Motion is in words and figures following to wit:

[fol. 56] [Title omitted]

MOTION FOR NEW TRIAL—Filed January 28, 1949

And now, after verdict and before sentence, the said Arthur Smith, Edgar Donald Morgan and Talbot Jennings, defendants in the above entitled action, by Howard D. Geter, the Counsel, come and move the Court to set aside

And by express consent and agreement between the State's Attorney and the said Defendant and his Counsel now here given and made in open Court, it is ordered by the Court that this cause be and the same is hereby continued until Monday, January 10th, A. D. 1949 at 10:00 A. M.

[fol. 52] [Caption omitted]

MINUTE ENTRY—January 10, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid and they hearing the further testimony of witnesses.

It is ordered by the Court that this cause be and the same is hereby continued until tomorrow, January 11th, A. D. 1949 at 10:00 A. M.

[fol. 53] [Caption omitted]

MINUTE ENTRY—January 11, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid and they hearing the further testimony of witnesses.

And by express consent and agreement between the State's Attorney and the said Defendant and his Counsel now here given and made in open Court, it is ordered by the Court that this cause be and the same is hereby continued until tomorrow, January 12th, A. D. 1949.

[fol. 54] [Caption omitted]

VERDICT—January 12, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And also come the Jurors of the Jury aforesaid, and they hearing the arguments of Counsel and instructions of the Court, retire in charge of sworn Officers of this Court to consider of their verdict.

the verdict of the jury and for a new trial in said cause, upon the ground and for the reasons following:

1. The Court erred in not discharging the defendants on motion because they were not tried within four months after their arrest, as is by statute provided.

2. The court erred in not supressing certain evidence on motion of the defendants made before trial.

3. The verdict is not sustained by evidence of the defendants guilt beyond a reasonable doubt.

4. The verdict is contrary to the law and the evidence.

5. The Court should have sustained the motion to find the defendants not guilty at the close of the People's case.

6. The Court erred in allowing the confessions of the defendants to go to the jury because said confessions were made under duress.

7. The Court admitted improper and illegal evidence offered by the People over the defendant's objection.

[fol. 57] 8. The Court refused to allowed the defendants to ask certain proper questions of the People's witnesses on cross-examination.

9. The Court admitted improper evidence in rebuttal over the defendant's objection.

10. The Court erred in giving instructions for the People asked by the State's Attorney, and each and every one of them.

11. The Court erred in not giving all of the instructions asked for by the defendants.

12. The evidence introduced by the People is insufficient to support the verdict of the jury.

13. The State's Attorney during the trial and argument of the case was guilty of prejudicial misconduct and abuse of the privilege of argument to the prejudice of the defendants as shown by the record.

(Signed) Howard D. Geter, Attorney for Arthur Smith, Edgar Donald Morgan and Talbot Jennings.

[File endorsement omitted.]

[fol. 58] ORDER OVERRULING MOTION FOR NEW TRIAL—January 28, 1949

And the Court hearing Counsel in support of said motion as well as in opposition thereto and being fully advised in the premises, doth overrule said motion and orders that said motion be and the same is hereby overruled accordingly.

And Counsel for said Defendant now here moves the Court by written motion in arrest of Judgment in this cause, which said motion is in words and figures following, to-wit:

[fol. 59] [Title omitted]

MOTION IN ARREST OF JUDGMENT—Filed January 28, 1949

The Defendant, Arthur Smith, Edgar Donald Morgan and Talbot Jennings, by Howard D. Geter, their attorney, now come and move the Court to arrest the judgment upon the verdict of the jury and for reasons therefore show the following:

1. That the Court was without jurisdiction to hear the charge against the defendants since the indictment shows that the defendants were not tried within four months of the date of their commitment, which delay was not caused through any fault on their part.

2. The Constitutional rights of the defendants were violated because of the illegal arrests and illegal searches of their persons and premises.

3. The defendants were compelled to give evidence against themselves by making confessions under duress.

(Signed) Howard D. Geter, Attorney for Defendants.

[File endorsement omitted.]

[fol. 60] ORDER OVERRULING MOTION IN ARREST OF JUDGMENT—January 28, 1949

And the Court hearing Counsel in support of said motion as well as in opposition thereto and being fully advised in the premises, doth overrule said motion and orders that said motion in Arrest of Judgment be and the same is hereby overruled accordingly.

JUDGMENT AND SENTENCE—January 28, 1949

Judgment of the Court is: Judgment on the verdict, heretofore entered herein January 12th, 1949, the Defendant is Guilty of Robbery while armed in the manner and form as charged in the indictment.

Defendant sentenced on Verdict and Judgment to the Illinois State Penitentiary and the Court fixes the minimum limit or duration of imprisonment for a term of not less than Ten (10) years and not more than Twenty five (25) years, as provided by law.

And now neither the said Defendant nor his Counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the verdict and judgment of guilty, heretofore rendered to the indictment in this cause.

Therefore, it is considered, ordered and adjudged by the Court that the said Defendant Talbot Jennings is guilty of the said crime of Robbery while armed in manner and form as charged in the indictment in this cause, and the said verdict and judgment of guilty.

Therefore, it is ordered and adjudged by the Court that the said Defendant Talbot Jennings be and he hereby is sentenced to the Illinois State Penitentiary for the crime of Robbery while armed in manner and form as charged in the indictment whereof he stands convicted, for a term of years not less than ten years, nor more than twenty five years, for the crme whereof he stands convicted, and it is further ordered and adjudged that the said Defendant Talbot Jennings be taken from the bar of the Court to the Common Jail of Cook County, and from thence by the Sheriff of Cook County to the Illinois State Penitentiary, and be delivered to the Department of Public Safety and the said Department of Public Safety is hereby required and com- [fol. 61] manded to take the body of the said Defendant Talbot Jennings and confine him in said Penitentiary, according to law, from and after the delivery thereof until discharged according to law, provided such term of imprisonment in said Penitentiary shall not be less than Ten years, nor more than twenty five years, for the crime for which the said Defendant was convicted and sentenced.

It is further ordered that the said Defendant pay all the cost of these proceedings, and that execution issue therefor.

[fol. 62] Clerk's Certificate to foregoing record omitted in printing.

[fol. 63]

EXHIBIT B

IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

PROCEEDINGS ON MOTION TO SUPPRESS EVIDENCE

Procedings had in the above entitled cause on Friday, August 13, 1948, before the Honorable Alan E. Ashcraft, sitting as a Judge of said court:

Present: Hon. Wm. J. Tuohy, State's Attorney, by Mr. James Brown, Assistant State's Attorney, Attorneys for the People. Mr. Howard Geter, Attorney for the defendants.

[fol. 64] RAYMOND HUTCHISON, called as a witness by the defendants herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Geter:

Q. What is your name, sir?
A. Raymond Hutchison.
Q. You are a police officer, are you?
A. Yes, sir.
Q. Where are you assigned, Officer?
A. Oak Park, Illinois.
Q. Do you live in Oak Park?
A. Yes, sir.
Q. Where?
A. 701 North Taylor Avenue.
Q. Calling your attention to on or about the 5th or 6th of June, 1948, did you have occasion to arrest one Edgar Donald Morgan?
A. Yes, sir, I did.
Q. Where did you make that arrest?
A. At the Evans Hotel, 61st and Evans, Chicago.

The Court: Whom did you arrest? Smith?
A. Morgan.

Mr. Geter:

Q. What time of the day or night was that, Officer?
A. Around five-thirty in the evening.
Q. And who was with you at the time you made this arrest?
[fol. 65] A. My partner and Officer Miles of the Chicago police.
Q. What is your partner's name?
A. Officer Piotter.
Q. Is he the officer that is here today?
A. Yes, sir, he just left the room.

Mr. Brown: What date was that?
Mr. Geter: That was the 5th day of June.

Q. Did you have a warrant for his arrest at that time?
A. Not at that time, no, sir.
Q. And where was he when you arrested him?
A. In a hotel room.
Q. How did you get into the hotel room?
A. We had a key to the room.
Q. How did you get that key?
A. It was given to us by the man that had the room with him.
Q. Where did you see this man?
A. 42nd and Ellis.
Q. 42nd and Ellis?
A. Yes, sir, 4201 Ellis Avenue.
Q. That is about how far from the Evans Hotel?
A. It is quite a ways; a couple of miles.
Q. And was this man with you that you say had this room with him?
A. Was he with us?
Q. Was he with you when you went there?
A. No.
[fol. 66] Q. Did you say anything to—did you know Morgan before you went there?
A. Yes.
Q. Where did you know him?
A. I was informed who he was and told who he was and knew all about him before I went to the room.

Q. Had you ever met him?
A. No, I hadn't.
Q. Had you ever seen him?
A. No.
Q. And after you got into this room, what did you do, if anything?
A. After we entered the room?
Q. Yes.
A. Placed him under arrest, told him he was under arrest.
Q. Did you tell him what he was under arrest for?
A. That is right.
Q. What did you tell him?
A. For armed robbery.
Q. For armed robbery?
A. That is right.
Q. Did you know him?
A. No. My information—I did place him under arrest. I had knowledge to believe he was the man I wanted.
Q. What made you believe that?
A. I was informed from two different sources that he was the man who was involved. We already had one man in custody who told me he was the man who was with him.
Q. Who were these people that informed you?
[fol. 67] A. Arthur Smith and Fred Anderson.
Q. When did they give you this information?
A. Arthur Smith gave me that information on about the 28th day of May.
Q. Arthur Smith. Did he sign a complaint against this boy Morgan?
A. No.
Q. Did anyone at any time sign a complaint against him?
A. Yes, later.
Q. I mean before you arrested him?
A. No, sir.
Q. What was Morgan doing when you went into the room?
A. He was in bed.
Q. How was he dressed, or was he dressed?
A. He was naked.
Q. Did he have on any clothes at all?
A. None at all.
Q. After you placed him under arrest, then what did you do?
A. After I placed him under arrest I noticed a loaded pistol, a loaded revolver, lying on the dresser.

Q. Lying on top of the dresser?
A. Lying on top of the dresser.
Q. That is after you placed him under arrest?
A. After I placed him under arrest.
Q. Did you go in any of the dresser drawers there?
A. Later on, yes, we did.
[fol. 68] Q. Did you find anything in the drawers?
A. No, sir.
Q. Did you search the room, that is, I mean did you go under the mattress?
A. I don't recall whether we did or not.
Q. But you did make a search of the room, is that right?
A. Yes, sir.
Q. Did you have a search warrant to search the room?
A. No, I didn't.
Q. Had you made any application for any warrant?
A. No, I hadn't.
Q. You took this revolver, did you?
A. Yes, sir.
Q. What kind of a revolver was it?
A. It is a Spanish make, .38 caliber.
Q. Did you take anything else, any other property?
Q. Yes, there was a wrist watch there and a diamond ring.
Q. Where were they?
A. Lying right on top of the bureau, of the dresser.
Q. But you didn't get anything when you went through these drawers; you didn't get anything that you took?
A. No, I didn't. There was nothing I wanted; no evidence of any kind.
[fol. 69] Q. Before you entered this room, did you call to Morgan or anyone?
A. No, we didn't.
Q. You just took the key?
A. Opened the door and walked in.
Q. And opened the door and went on in. And this fellow that you say had this key, did he sign any complaint against Morgan?
A. No, sir.
Q. Did you arrest him also?
A. I had him in custody.
Q. Did you take that key from him or did he voluntarily give it to you?
A. He gave it to me; he offered it to me.
Q. He offered it to you?

A. That is right.
Q. And told you to go on out there and go into the room?
A. That is right.
Q. What is this fellow's name?
A. Fred Anderson.
Q. Do you know where he is now?
A. No, I don't.
Q. What happened to him after you arrested him?
A. He was arrested. The State's Attorney office saw fit to discharge him. He was not implicated in the robbery.
[fol. 70] Q. You say you knew Morgan. What did these people tell you about Morgan that made you know him?
A. All I had was a physical description, and I was told by Smith that he was carrying a pistol and that he would shoot you and he was a very dangerous character.
Q. You were told he was carrying a pistol?
A. That is right.
Q. Was he carrying a pistol when you saw him?
A. No, he had the pistol on the dresser.

Mr. Geter: I think that is all.

Cross examination.

By Mr. Brown:

Q. When was it that you talked to Arthur Smith?
A. On the 28th of May.
Q. And what was Smith arrested for at that time?
A. Smith at that time was the driver of a car that was used in committing an armed robbery.
Q. Was that the armed robbery of Sidney L. Barr?
A. Yes, sir.
Q. That is the robbery that is charged in Indictment 48-1247 which is here under discussion today?
A. Yes, sir.
Q. And Arthur Smith told you that this man Morgan was implicated in that robbery with him?
[fol. 71] A. That is right.
Q. And that he could be found at this Evans Hotel, and the defendant or co-defendant Smith in this case gave you the key and told you that you could find him there?
A. No, sir.
Q. And Smith told you that you could find Morgan there?

A. No, Smith took me to 6354 Maryland Avenue, and told me Morgan and a man by the name of Anderson roomed together at that hotel. At that hotel we found they had moved. We began looking for Fred Anderson. We arrested Fred Anderson, who had knowledge of this robbery, and he is the man that gave me the key and said he shared the room with Morgan at the Evans Hotel and that is the man we wanted for the armed robbery.

Q. And Smith also told you that Morgan was in the robbery?

A. Smith also told us that Morgan was in the robbery, better known as Blackie or Buddy.

Mr. Brown: That is all.

Mr. Geter: I want to question this officer as to the other two defendants here.

The Court: Very well.

[fol. 72] Redirect examination.

By Mr. Geter:

Q. You made the arrest of the other two defendants?

A. Yes, sir, I did.

Q. I want to just question you on that. Calling your attention to about the 28th day of May, 1948, did you arrest one Arthur Smith, the petitioner here?

A. Yes, sir.

Q. Where did you arrest him?

A. We picked him up on information at his home, I think it is 42nd Place, and took him *and took him* into the Stanton Avenue police station to question him.

Q. Did you have a warrant for his arrest at the time you took him from his home?

A. Not at that time. We were on an investigation.

Q. Did you get any personal property from Smith?

A. Yes, he was wearing a gold wedding ring. It was identified as part of the jewelry taken in the robbery.

Q. At the time you say it was identified, how did you identify it?

A. I didn't identify it.

Q. When did you take it from him?

A. We took it from him at the Detective Bureau, 11th [fol. 73] and State.

Q. And what was Smith doing when you arrested him?

A. He was hiding in a washroom.
Q. Hiding?
A. Yes, sir.
Q. He could have been washing up, couldn't he?
A. No, he wasn't.
Q. Did he know you were there?
A. Yes, he did.
Q. And then he ran into the washroom?
A. He went into the washroom and was hiding in there with the door locked and refused to open it.
Q. Until you broke it?
A. No, we didn't break it. We told him that we were police officers and wanted to talk to him, then he came out.
Q. Oh, he was hiding, but after you told him you were police officers he came out?
A. That is right.
Q. Who gave you the idea he was hiding?
A. His wife.
Q. She told you he was hiding?
A. No, she didn't tell us.
Q. She told you he was hiding in the bathroom?
A. No, she told us he was in the bathroom.
Q. As a matter of fact, didn't you tell him his car was in [fol. 74] a wreck and you wanted to take him down and question him?
A. No, we told him we were investigating who was driving his taxicab, and we wanted to know about it, and he told me he didn't see the cab.
Q. Had you ever seen Smith before?
A. No, I hadn't.
Q. At the time that you arrested Smith, no warrant had been issued for his arrest, had it?
A. No, not at that time.
Q. You had never seen him prior to that time?
A. No, sir.
Q. Was anybody with you who had ever seen him?
A. Yes, I had two witnesses.
Q. Who were with you at the time you arrested him?
A. That is right, two witnesses at the Stanton Avenue police station.
Q. I am talking about at home.
A. No, not there.
Q. You went there and you arrested him and took him over to the Stanton Avenue station?

A. After we had been told he was driving the cab on Monday, May 24th.

Q. Who told you that?

A. Marcus Williams, who was part owner of the cab.

[fol. 75] Q. Did Marcus Williams sign any complaint against him?

A. No.

Q. Did anybody sign any complaint against him?

A. Later.

Q. I mean prior to the time that you arrested him?

A. No, sir.

Q. You arrested him at his home?

A. Picked him up at his home and took him to the Stanton Avenue station. He was later arrested at the Stanton Avenue police station.

Q. Calling your attention to on or about the 6th day of June, 1948, did you arrest one Talbot Jennings?

A. No, I did not.

Q. Were you present when he was arrested?

A. No, I was not.

Q. You don't know anything about this gentleman here, Talbot Jennings?

A. I know what led up to his arrest.

Q. You didn't make the arrest?

A. No, sir.

Q. You don't know whether anybody had a warrant for his arrest or not?

A. No, I don't.

Mr. Geter: That is all.

[fol. 76] Cross-examination.

Mr. Brown:

Q. As I understand it, then, Officer, in connection with this armed robbery of Sidney L. Barr which is charged in Indictment 48-1247, you made an investigation, and did you find from that investigation that a seven passenger Buick cab had been used in the robbery?

A. Yes, sir.

Mr. Geter: Your Honor, I am going to object to counsel leading the witness.

Mr. Brown: This is cross-examination, your Honor. He is not my witness.

Mr. Geter: But you have no right to tell him what to say. It is leading on cross-examination.

The Court: The objection is overruled.

By Mr. Brown:

Q. Then did you go to a gas station and find out from the gas station in the course of your investigation that they saw this cab parked at the place where the robbery was occurring, and they got the license number and the description of it?

A. They got the physical description of the cab and driver.

Q. And the driver. And from the description you found [fol. 77] out that that driver was Marcus Williams, did you?

A. That is right.

Q. Then you went to Marcus Williams and found out that he was the owner of that cab?

A. That is right; he was part owner of the taxicab with Arthur Smith.

Q. And after talking with Marcus Williams, he told you that his partner was the defendant, Arthur Smith?

A. That is right.

Q. Then you went and arrested Smith?

A. He told me also that Smith had taken the cab from him Monday morning, May 24th, and never returned it—left it parked on the street that night and told him to come and get it. That was the taxicab we were laying for.

Q. And May 24th was the date of this robbery, was it?

A. That is right.

Mr. Brown: That is all.

Redirect examination.

By Mr. Geter:

Q. On your investigation when you found out all these physical descriptions and all that, did you ever have any- [fol. 78] body swear out a complaint and name anybody by that physical description?

A. No.

Q. You just started out looking for people after you talked to these people, is that right?

A. That is right.

Q. You never had occasion to inform him there was a robbery committed, is that right?

A. That is right.

Q. And did this man—did you talk to him prior to the time that you arrested these fellows?

A. Yes.

Q. And he gave you certain descriptions, is that right?

A. That is right.

Q. Did you ever go before any magistrate and ask that a warrant be sworn out for these individuals?

A. Yes, we had a John Doe warrant. I was carrying a John Doe warrant to use in my investigation. I never saw fit to use it. I didn't need it.

Q. You carried a John Doe warrant?

A. Yes.

Q. Where is it?

A. I have it in my files.

Q. What do you mean by a John Doe warrant?

A. On information I had; and the description and the information given by Smith, I took out a John Doe warrant. [fol. 79] In case I had to go before the court I had a John Doe warrant.

Q. This Marcus who talked to you, you arrested him also, didn't you?

A. No, he was taken in for investigation.

Q. Didn't you take Marcus to Oak Park and keep him in jail out there a day or two?

A. Yes, he was in custody.

Q. Did he fit that description that you are talking about?

A. No.

Q. Why did you arrest him?

A. We took him out there. He was not arrested. He was released the same day.

Q. What do you mean, he was not arrested?

A. Took him out to question him.

Q. What do you mean he was not arrested?

Mr. Brown: I object to cross-examining his own witness.

Mr. Geter:

Q. You arrested him, didn't you?

A. No, I didn't. He was a suspect. He was under investigation.

Q. Maybe you and I don't understand about "arrest". You locked him up out there, didn't you?

A. He was in custody a few hours.

Q. He was in custody, is that right?

[fol. 80] A. Yes, he was.

Q. Did you arrest anybody else on these investigations?

A. Yes.

Q. This Anderson, you arrested him, didn't you?

A. Arrested Fred Anderson.

Q. Did he answer any of the descriptions that you had?

A. No, he didn't.

Mr. Geter: That is all.

Recross examination.

By Mr. Brown:

Q. Were these people taken in as material witnesses, as our statute provides for?

A. Yes, sir.

Q. And after you got your information from them, you released them, is that right?

A. They were released.

Mr. Brown: That is all.

Redirect examination.

By Mr. Geter:

Q. You say the statute provides you can pick anybody up as a material witness?

A. If I have information and belief, yes, and some evidence.

Q. You can arrest them without a warrant, is that right?

[fol. 81] A. I didn't say we arrested them.

Q. You don't call that arresting when you take them in?

A. No.

Q. O. K.

Mr. Brown: Chapter 38, counsel.

Mr. Geter: That is all, Officer.

Mr. Brown: That is all.

(Witness excused.)

EDWARD PIOTTER called as a witness by the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Geter:

Q. What is your name, sir?
A. Edward Piotter.
Q. Where do you live?
A. 820 Belford Avenue, Oak Park.
Q. You are a police officer of the Village of Oak Park?
A. Yes, sir.
Q. Calling your attention to on or about the 5th day of June, 1948, did you have occasion to be with Officer Hutchison when Edgar Donald Morgan was arrested?
[fol. 82] A. Yes, sir, I did.
Q. Where was that arrest?
A. At the Evans Hotel.
Q. About what time was that?
A. About five-thirty in the afternoon.
Q. And did you know Edgar Donald Morgan prior to the time that you went there; that is, you had never met him, had you?
A. No, sir.
Q. Had you ever seen him?
A. No, I hadn't.
Q. Had you ever seen a warrant for his arrest?
A. We had a John Doe warrant for his arrest, yes.
Q. I mean—for his arrest, you say?
A. Yes.
Q. Did you arrest anybody else under that John Doe warrant?
A. No.
Q. Nobody at all?
A. No.
Q. How did you get into the Evans Hotel?
A. We had a key.
Q. Had a key?
A. Yes.
Q. How did you get that key, Officer?
A. From a friend of his by the name of Fred Anderson.
Q. Well, how did you happen to get it?
A. Well, we picked up Fred Anderson because he was [fol. 83] rooming with Morgan at one time—we picked

him up and he told us where we could find him. He says, "Here is the key to his room in the Evans Hotel. He is there now."

Q. He ran his hand in his pocket and told you "Here is the key"?

A. Yes, sir.

Q. What happened to him then, that is, Anderson?

A. A Chicago squad had him in their car. I believe they took him over to the Wabash Avenue Station.

Q. Did you ever see him after that time?

A. Yes, sir.

Q. When and where?

A. We picked him up at the Wabash Avenue Station after we made the arrest of Morgan.

Q. Then you took him in with Morgan?

A. We took him to the Bureau at 11th and State.

Q. Did anybody identify this fellow Anderson at this place as being one of the men who had participated in some kind of a robbery?

A. Not at the hotel.

Q. I mean at 11th Street when you had Morgan and Anderson there.

A. Yes, he was identified there.

[fol. 84] Q. Was Anderson identified?

A. Anderson? No.

Q. Nobody said anything to Anderson at all?

A. Anderson had no part in it.

Q. When you got to the Evans Hotel with this key, did you knock on the door or what?

A. No, we just opened the door.

Q. You unlocked it and went in?

A. Yes, sir.

Q. You didn't say anything before you entered?

A. No.

Q. Did you search the premises after you got inside?

A. After we placed him under arrest we looked around the premises, yes.

Q. What do you mean by looking around?

A. We looked around. For one thing, we found a gun that was used in a robbery.

Q. Wait just a minute, now. You found a gun.—You don't know whether it was used in the robbery or not?

A. It was later identified that it was used.

Q. You didn't know at that time whether it was used in any robbery?

A. No.

Q. You found a gun?

A. Yes.

Q. Where did you find this gun?

[fol. 85] A. On top of the dresser.

Q. What else did you find on top of the dresser, if anything?

A. We didn't find anything else.

Q. Who found this gun up there?

A. Officer Hutchison.

Q. And when you walked in the room, the first thing you saw was the gun, wasn't it?

A. No. The first thing I saw was Morgan. I was looking for Morgan.

Q. You were looking for Morgan?

A. Yes.

Q. But you didn't know Morgan otherwise than what this fellow had told you?

A. Just from a description of him.

Q. What was Morgan doing at the time you walked in?

A. He was in bed.

Q. What kind of clothes did he have on, if any?

A. Just his shorts on.

Q. He had on shorts?

A. Yes.

Q. Was there anybody else in the room there with him?

A. Yes.

Q. How many people?

A. Two girls.

Q. And you took Morgan on away, is that right?

A. Pardon me?

Q. You took him away?

A. Yes.

[fol. 86] Q. Did you take anybody else with you?

A. Yes, I believe his girl friend came along with us.

Q. She came along?

A. Yes.

Q. What do you mean she came along?

A. She came along with us.

Q. Did she go all the way to Oak Park with you?

A. Yes.

Q. Did you keep her out there all night?
A. Yes.
Q. She volunteered to stay in jail all night?

Mr. Brown: I object as being immaterial, your Honor.
Mr. Geter: I don't know whether it is or not. I want to show the method these fellows used.
The Court: What do you mean?
The Witness: She had no objection.

Mr. Geter:

Q. As a matter of fact, you arrested her, didn't you?
A. She was under arrest, sure; she was in custody.
Q. Calling your attention to on or about the 28th day of May, 1948, did you have occasion to arrest or be at a place where Arthur Smith was arrested?
A. No, I was not there. I was not there when he was arrested.
[fol. 87] Q. You don't know any of the circumstances?
A. I was at the Stanton Avenue station.
Q. You didn't have any warrant for the arrest of Arthur Smith, did you?
A. I don't know anything about it. I was not there when Arthur Smith was arrested.
Q. I say, you didn't have a warrant in your possession?
A. I didn't have any, no.
Q. And you don't know that anybody did?
A. No, I don't know.
Q. Did you at any time take anybody before a police magistrate to get a warrant for the arrest of either Smith, Jennings or Morgan?
A. We had a John Doe warrant.
Q. No. I say did you at any time take anybody before the magistrate?
A. No, sir.
Q. After you got these descriptions did you take anybody there?
A. No.
Q. Did you go before any magistrate and get any warrant to search any premises in regard to this property?
A. No, sir.
Q. None at all?
A. No.

Q. Now, calling your attention to on or about the 6th [fol. 88] day of June, 1948, were you present when Talbot Jennings was arrested?

A. Yes.

Q. Did you make that arrest?

A. Yes.

Q. Where was that made?

A. I believe it was 5303 Dearborn Street.

Q. I cannot hear you, Officer.

A. 5303 Dearborn.

Q. Chicago, Illinois?

A. Chicago, Illinois.

The Court: 53 What?

A. 5303 Dearborn.

Mr. Geter:

Q. About what time was that?

A. About six A. M. in the morning.

Q. Where did you make this arrest, what part of the premises?

A. I arrested—he was in the washroom, the bathroom of his flat on the second floor.

Q. And how did you get into this flat, Officer?

A. We were let in by a lady in the house.

Q. I mean did you——

A. We knocked on the front door and she asked who was there, and we told her it was police officers, and she asked us what we wanted and we told her, and she says, "Come on in."

Q. Who did you tell her was wanted?

[fol. 89] A. We told her we were looking for a fellow by the name of Jennings.

Q. Had you ever seen Jennings prior to that time?

A. No, just by description.

Q. After you got into this apartment, did you search the apartment?

A. We looked around, yes. We noticed the bathroom door closed. We opened it and he was dressing himself.

Q. You merely look around. Did you go into any of the dresser drawers?

A. No.

Q. How many people did you find in that apartment?

A. I believe there were three there.

Q. Did you find one lady in bed?

A. Yes, sir.

Q. What did you do in regard to her?

A. I didn't do anything in regard to her.

Q. Did you get any property, any personal property, in this apartment?

A. Personal property, no. We didn't take anything that I know of. We didn't take anything.

Q. You didn't get any personal property from there at all?

A. I didn't, no.

Q. Have you seen any personal property that was taken [fol. 90] from that apartment?

A. No.

Q. Now, you went back, you say. Was Jennings sitting in the bathroom or was he standing in there or what?

A. Standing. He was trying to get his clothes on, trying to dress.

Mr. Brown: Your Honor, I object to any further questioning of this witness. If Counsel is done searching now to get evidence to assist his defense, that is one thing.

Mr. Geter: You don't know what I am searching for.

Mr. Brown: Pardon me, do you mind? His witness is on the stand now. His witness has said he took nothing from that apartment, saw nothing taken from that apartment, and since then has seen nothing taken from that apartment. This is a motion to suppress. His witness has said that. I submit he was not making a search, but inquiry to assist him in the defense of the case. He has done what he needs to do, and his own witness has said he took nothing.

Mr. Geter: Permit me to disagree with you there, because whenever there is a motion to suppress evidence there has to be a thorough hearing on it, and this man isn't any more [fol. 91] my witness that he is his witness.

Mr. Brown: It is thorough now when his own witness says he took nothing. That is what you are trying to find out.

Mr. Geter: The Court is interested in knowing whether or not the constitutional rights of these men have been violated, and he is not going to say this is my witness, and because he says that, I am bound by that; that he didn't have a right to go in there.

Mr. Brown: I submit, you Honor, the petition here——

The Court: In the civil practice we have what is called Discovery Before Trial.

Mr. Geter: We are not trying to discover anything.

The Court: But under that or under the statute you have a right to call adverse witnesses. That as I understand, does not apply to criminal law. Mr. Brown is undoubtedly correct in his objection, but I am inclined to let him proceed.

Mr. Brown: I submit further, your Honor, that even in his own petition he does not state that anything was taken. He says something might have been taken.

[fol. 92] Mr. Geter: No, I say one gold ring was missing of Jennings.

The Court: Your objection is well taken, Mr. Brown, but I am inclined to let him proceed, within reason.

Mr. Geter: I am not searching to find out what they got from this man. The only thing I want to know is whether he had a right to go in there, or went in illegally.

Q. How many officers went in there with you?

A. There were three officers went in.

Q. Would you mind giving me their names, please?

A. Lieutenant Nestor and a Chicago police officer from Warren Avenue station. I couldn't give you his name.

Q. There is one more. You said three.

A. Myself.

Q. But there were just three officers altogether? Officer Hutchison was not with you?

A. No, he was not there.

Q. Did you have a warrant to search those premises?

A. No, we didn't.

Q. You didn't have a warrant for the arrest of Talbot Jennings, is that right?

A. No.

Mr. Geter: That is all.

[fol. 93] Cross examination.

By Mr. Brown:

Q. You had evidence that he was implicated in the crime charged in this indictment, didn't you?

A. Yes, and we were told where he could be found.

Mr. Brown: That is all.

(Witness excused.)

[fol. 94] I, Helen Kaylor, Official Shorthand Reporter of the Criminal Court of Cook County, Illinois, do hereby certify that as such Official Shorthand Reporter I reported in shorthand the proceedings had in the Motion to Suppress in the case of The People of the State of Illinois vs. Arthur Smith, Jr., Talbot Jennings and Edgar Donald Morgan, Indictment No. 48-1247, and thereafter caused to be transcribed into typewriting the foregoing portion of the proceedings, which I hereby certify is a true and correct transcript of that portion of the proceedings had at such hearing.

Helen Kaylor, Official Shorthand Reporter of The Criminal Court of Cook County.

Subscribed and sworn to before me this 5th day of November, A. D. 1949. Herman F. Post, Notary Public, Seal.

[fol. 95]

EXHIBIT C

AFFIDAVIT

In re: Talbot H. Jennings

To whom it may concern:

I, Roseanna Watson, age 28, residing at 5303 S. Dearborn, in the city of Chicago, Ill., in the State of Ill. do solemnly swear; that on or about June 9, 1948, I visited Talbot H. Jennings in the lockup of the Oak Park Police Station, in the Village of Oak Park, Illinois, in which said Talbert H. Jennings was a prisoner. Said prisoner, Talbot H. Jennings, bore livid bruises on his face and appeared in great pain and discomfort. Said prisoner, Talbot H. Jennings, had suffered brutal treatment about his face and body by the police officers of the Oak Park Police Force. I also solemnly swear; that said prisoner, Talbot H. Jennings, was arrested in my presence on June 6, 1948, at which time said Talbot H. Jennings, was struck in the face by an Oak Park Detective for asking me to notify his relatives to get him a lawyer.

Upon subpoena or deposition issued by a court of law, I will testify and again swear to the above statement in this affidavit.

(signed) Roseanna Watson

Subscribed and sworn to before me this — day of July A. D. 1949. B. Huff, Seal. My commission expires Jan. A. D. 51.

[fol. 96]

EXHIBIT D

AFFIDAVIT

In re: Talbot H. Jennings

To whom it may concern:

I, Evelyn Jackson, Age 23, residing at 5303 S. Dearborn, in the city of Chicago in the State of Ill. do solemnly swear; that on or about June 9, 1948, I visited Talbert H. Jennings in the lockup of the Oak Park Police Station, in the Village of Oak Park, Illinois, in which said Talbot H. Jennings was a prisoner. Said prisoner, Talbot H. Jennings, bore livid bruises on his face and appeared in great pain and discomfort. Said prisoner, Talbot H. Jennings, had suffered brutal treatment about his face and body by the police officers of the Oak Park Police Force. I also solemnly swear that said prisoner, Talbot H. Jennings, was arrested in my presence on June 6, 1948, at which time said Talbot H. Jennings was struck in the face by an Oak Park Detective because he wanted a lawyer.

Upon subpoena or deposition issued by a court of law, I will testify and again swear to the above statement on this affidavit.

(Signed) Evelyn Jackson

Subscribed and sworn to before me this 14th day of July A. D. 1949. B. Huff, Seal. My commission expires Jan. A. D. 1951.

[fol. 97]

EXHIBIT E

AFFIDAVIT

In re: Talbert H. Jennings

To whom it may concern:

I, James R. Marshall, age 27, residing at 816 E. 39 St. in the city of Chicago, in the State of Illinois, do solemnly swear; that I know it to be a fact that Talbert H. Jennings was in Detroit, Michigan on May 24, 1948.

On three occasions, October 4th, November 4th, and December 13th, 1948 I appeared in court to testify in behalf of Talbot H. Jennings. But each time the trial of Tal-

bot H. Jennings was delayed by continuances until when the trial of Talbot H. Jennings commenced I was unable to appear and testify. Upon subpoena or deposition issued by a court of law, I will testify and again swear to the above statement on this affidavit.

(signed) James R. Marshall

Subscribed and sworn to before me this 3 day of Aug. A. D. 1949. Norman Flaws, Seal. My commission expires Mar. 9th A. D. 1950.

[fol. 98]

EXHIBIT F

AFFIDAVIT

In re: Talbot H. Jennings

To whom it may concern:

I, Nettie Smith, age 26, residing at 4916 St. Lawrence in the city of Chicago in the State of Ill. do solemnly swear; that I know it to be a fact that Talbot H. Jennings left Chicago, Illinois on May 22, 1948 enroute to Detroit, Michigan.

On May 23, 1948, I talked with said Talbot H. Jennings by Long Distance Telephone in Detroit, Michigan from my home in Chicago, Ill.

I personally arranged lodging for said Talbot H. Jennings with a friend of mine Mr. Jimmy Hughes, residing at 1726 St. Antoine, St. in Detroit, Michigan before the aforesaid Talbot H. Jennings departed for Detroit, Michigan.

Upon subpoena or deposition issued by a court of law, I will testify and again swear to the statement in this affidavit.

(signed) Nettie Smith

Subscribed and sworn to before me this 23 day of July A. D. 1949. C. B. Waterford, Seal. My commission expires Aug. 15, 1949.

[fol. 99]

EXHIBIT G

AFFIDAVIT

In re: Talbert H. Jennings

To whom it may concern:

I, Arthur Smith, age 27, serving time in The Illinois State Penitentiary at Joliet, Illinois, Statesville Branch, under register number 28329 do solemnly swear; that on May 24, 1948 I drove two men to Oak Park, Illinois in my taxicab. These same two men allegedly robbed the Sidney L. Barr Jewelry Store, located at 1031 West Lake, Street, Oak Park Illinois, and Talbot H. Jennings was positively not one of the two men in my taxicab on May 24, 1948 whom I drove to Oak Park Illinois.

The above statements are true and correct to my own knowledge and I am willing to testify to same upon subpoena or deposition issued by a court of law.

(signed) Arthur Smith, affiant.

Subscribed and sworn to before me this 30 day of June A. D. 1949. John J. Broderick, Seal. My commission expires Dec. 17, 1950 A. D.

[fol. 100]

EXHIBIT H

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

ARTHUR SMITH, JR., TALBOT JENNINGS AND EDGAR DONALD MORGAN

Before Judge Ashcraft and a Jury.
Indictment No. 48-1247.

Monday, January 3rd, 1949, 2:00 o'clock p.m.

Court met pursuant to recess.
Present: Mr. Brown, Mr. Phillips, Mr. Geter.

(And thereupon, the following proceedings were had in the presence and hearing of the jury, to-wit:)

Mr. Brown: Officer Piotter.

EDWARD M. PIOTTER, a witness called on behalf of the State, having been previously duly sworn, was examined and testified as follows:

Mr. Brown: All the witnesses have been sworn, haven't they?

The Court: This witness has been sworn.

[fol. 101] Direct Examination.

By Mr. Brown:

Q. Will you state your name, sir?
A. Edward M. Piotter.
Q. Will you spell your last name?
A. P-i-o-t-t-e-r.
Q. And your address?
A. 820 Belleforte Avenue, Oak Park, Illinois.
Q. And your occupation?
A. Police officer in the Village of Oak Park.
Q. How long have you been a police officer of the Village of Oak Park?
A. Eighteen and one-half years.
Q. Have you been associated with Sergeant Hutchison, and other police officers of the Oak Park Station, in the investigation of the robbery of the Barr Jewelry Store on May 24th, 1948?
A. Yes, sir.
Q. What was the first thing you did in connection with the investigation of that case?
A. Well, we were called to go to the robbery at 1031 Lake Street, the Barr Jewelry Store.
Q. When?
A. About 12:50, I believe it was.
[fol. 102] Q. Where were you at that time when you received that call?
A. Washington Boulevard and Elmwood Avenue.
Q. Were you standing on a street corner or what?
A. In a squad car.
Q. Was that squad car especially equipped?
A. Radio equipped.
Q. Is that a two-way radio?
A. Yes, sir.
Q. And that is where you got the call, did you?
A. Yes, sir.

Q. Will you state where you were again, now?
A. Elmwood and Washington Boulevard.
Q. Where is Elmwood with relation to Forest Avenue?
A. South and east.
Q. Elmwood?
A. Elmwood Avenue is east of Forest Avenue.
Q. How far?
A. About a half a mile.
Q. About a half a mile?
A. Yes, sir.
Q. And how far is Washington Boulevard south from Lake Street in Oak Park?
A. Four blocks.
[fol. 103] Q. And that is the intersection where you were at at about 12:50?
A. Yes, sir.
Q. And what did you do when you got the call?
A. Well, we proceeded to go to the robbery, and we entered the store. A squad had already been in there and released Mr. Barr, so we began our investigation. We made inquiries around the immediate vicinity to see if anybody had seen anything.
Q. Who was with you when you went there, by the way?
A. Sergeant Hutchison.
Q. Just the two of you in that squad?
A. Yes, sir.
Q. Who was driving?
A. I was.
Q. So when you got to the jewelry store, in connection with the first part of your investigation, did you or Hutchison talk to Barr?
A. Yes, sir.
Q. And then you did other things after that?
A. Yes, sir.
Q. All right, what was the next thing you did?
A. Well, we made inquiries around the neighborhood, and we learned that a cab had been seen in the vicinity.
Q. What did you do about that?
[fol. 104] A. We got a description of this cab, a 1930, blue Buick, with blue windows and white wall tires, and we were told that there was "Mc" something on the side. We then went to the License Bureau, where all of these cabs are licensed. We believed it to be a South Park jitney cab.

Mr. Geter: I didn't get that answer, Judge.

Mr. Brown: He said, "We believed it to be a South Side jitney cab," is that right?

The Witness: Yes, sir.

Mr. Brown:

Q. What license bureau did you go to?

A. 11th and State, the Cab License Bureau.

Q. In Chicago?

A. In Chicago, yes, sir.

Q. Go ahead. Then what did you do from then?

A. We couldn't get anywhere there, so we went out to the south side, where all of these cabs run along South Parkway and Indiana Avenue, and we looked around trying to locate a cab of this description; but we were unsuccessful in that. We went back to the Lincoln Park Police and got the cab detail, a couple of men in the cab detail, and gave them the description of the cab.

On the morning of the 26th, we got a call that they had [fol. 105] a cab of that description at the Stanton Avenue Station.

Q. Now, where is the Stanton Avenue Station?

A. I believe it is on 35th Street. I wouldn't be sure.

Q. Is it in Chicago?

A. In Chicago, the south side.

Q. It is one of the Chicago Police Stations, known as Stanton Avenue, is that right?

A. Yes, sir.

Q. And you got that call on May 26th. What did you do then?

A. We called the fellow from the gas station who had given us the description of the cab.

Q. What was his name?

A. Stewart.

Q. Is that the man who just walked out of the court room before you came in?

A. Yes, sir.

Q. All right.

A. We called him, and Sergeant Hutchison and myself and the gas station attendant went to the Stanton Avenue Station, where this gas station attendant identified the cab. They also had a man that was driving the cab, but he

couldn't identify him as the man driving it at that particular [fol. 106] day of the robbery.

Q. What was his name?

A. Marcus Williams.

Q. Did you talk to Marcus Williams then?

A. Yes, we did. And he told us that——

Mr. Geter: Just a minute. I object to that.

The Court: Objection sustained.

Mr. Brown:

Q. After talking to Marcus Williams and, as a result of talking to him, what did you do?

A. I stayed at the Stanton Avenue Station, but my partner, Sergeant Hutchison, and the Lincoln Park policemen went to a fellow's house by the name of——

Mr. Geter: Object to that, Judge.

The Court: Yes, unless you were there.

Mr. Brown:

Q. Did Hutchison leave you with the Lincoln Park policemen?

A. No, sir. He left me at the Station Avenue Station.

Q. I mean, did he leave you and go with the Lincoln Park police?

A. Yes, sir.

Q. How soon did he return?

A. I imagine an hour afterward, he returned.

Q. Did he have anyone with him?

A. Yes, sir, he did.

[fol. 107] Q. Who?

A. A man by the name of Arthur Smith.

Q. Do you see him in the court room?

A. Yes, sir.

Q. Point him out.

A. The second man with his arm on the table there (Indicating).

Q. That is the man behind Mr. Geter with his arm on the table?

A. Yes, sir.

Mr. Brown: Indicating, for the purpose of the record, the defendant Smith in this case.

Q. Now, when this Lincoln Park policeman and Sergeant Hutchison came back to Stanton Avenue with Smith, was the gas station man still there, Mr. Stewart?

A. Yes, sir.

Q. What was done, if anything, at that time?

A. He identified him as the man who was driving the cab on the day of the robbery.

Q. All right. What was the next thing you did in connection with this case after that?

A. We went to the Detective Bureau at 11th and State——

Q. (Interposing) What did you do there?

A. (Continuing) —with Arthur Smith. And we called Mr. Barr, who had been robbed, and we also called a colored [fol. 108] boy from the gas station that had also seen this particular cab.

Q. Did the colored boy from the gas station come somewhere where you were?

A. Well, I left 11th and State, and I picked up the colored boy and Mr. Barr and brought them to 11th and State.

Q. When they got to 11th and State, what, if anything, did they do in your presence?

A. Well, the colored boy——

Q. They or either of them.

A. The colored boy identified him as the man that had the cab.

Q. Was Smith there when he identified him?

A. Yes, sir.

Q. I mean, was he close enough so that he heard him say, "You are the man"?

A. Yes.

Q. Tell us what he said.

A. He said that was the man that he saw in the gas station on the day of the robbery.

Q. Had you or Hutchison, in your presence, searched Smith at the time at Stanton Avenue?

A. Yes. We asked him for some identification. He pulled out his wallet, and in his wallet he had a clipping of the [fol. 109] robbery.

Q. Did you speak to him about that?

A. Yes. We asked him why he was carrying the clipping of this particular robbery.

Mr. Geter: I am objecting to all of this, Judge.

Mr. Brown: Just a moment.

Mr. Geter: I am objecting to all of this on the ground that, number one, the arrest of Smith was illegal, and the search, naturally following it, was illegal.

Mr. Brown: I submit that has all been covered, your Honor, out of the presence of the jury.

Mr. Geter: I am still objecting to it.

The Court: The objection is overruled.

The Witness: A. He said he had a scrap book, and he was saving clippings of robberies.

Mr. Brown:

Q. What robbery was this he had the clipping of in his wallet?

A. The Barr Jewelry Store robbery.

Q. All right. Did you find anything else on his person?

A. He was wearing a ring that was identified by Mr. Barr as one of his rings.

Q. Just a moment. I show you People's Exhibit No. 6 for [fol. 110] identification and ask you if you ever saw that before.

A. Yes, sir.

Q. And where was the first time you saw that ring?

A. On Arthur Smith. He was wearing it at the Stanton Avenue Station.

Mr. Geter: I am objecting to all of this testimony on the same ground: that the arrest was illegal and the search was illegal.

The Court: The same ruling.

Mr. Brown:

Q. Now, then, after you had the second gas station man down at 11th and State, and Mr. Barr down there, was Smith asked anything about that ring, People's Exhibit No. 6 for identification?

A. Yes. We asked him——

Q. (Interposing) In the presence of Mr. Barr?

A. Yes. We asked him where he got it.

Q. What did he say?

A. He said he had gotten it from Morgan, I believe. He said Morgan had given him the ring.

Mr. Geter: I object to what he believes, Judge.

Mr. Brown:

Q. Is that your best recollection of what he said?

A. Yes, sir.

Q. What next did you do in connection with the investigation of this case?

[fol. 111] A. Then he went through the Bureau in Chicago, and about midnight that night we took him back to Oak Park.

Q. You took him back to Oak Park?

A. Yes, sir.

Q. Had you had him there before?

A. No, we haven't.

Q. Then you took him there for the first time?

A. We took him to Oak Park, yes, sir.

Q. What was the next thing you did in connection with this case?

A. We questioned him about the fellows that had been with him in this robbery, and he stated that he didn't know their names. He said he had just met them, and one of them was called Blackie and another one was called Blackie or Buddy. That was the only names he knew them by. But he told us if we went out to the south side, around 47th and Indiana, in there, he might be able to point these fellows out to us.

Mr. Geter: Of course, I am objecting to all of this as conversation that is attributed to Smith, Judge, on the ground that the arrest was illegal, and that it is——

The Court: On what ground? I didn't hear you.

[fol. 112] Mr. Geter: On the ground that the original arrest was illegal, and everything that followed was illegal.

The Court: That motion is overruled.

Mr. Brown:

Q. And what did you next do in connection with this investigation?

A. Well, we parked around there for a few hours and got back to the station about three o'clock in the morning, three-thirty, something like that. Then he told us that he knew a fellow by the name of Anderson whom Morgan may be living with on Maryland Avenue. So he said if we drove him out there he'd show us the room.

Q. Yes? What did you do next?

A. So we did. We drove him out there, and it was Room Twenty and a half.

Q. Where did you drive him to?

A. The New Drake Hotel. I believe it was in the 6300 block on Maryland Avenue.

Q. 6300 on Dante, did you say?

A. Maryland.

Q. And you said Room twenty what?

A. Twenty and one-half.

Q. And that is where you were supposed to find who?

A. That's where we were supposed to find Anderson and Morgan.

[fol. 113] The Court:

Q. What was that hotel?

A. The New Drake Hotel.

Mr. Brown:

Q. Did you go to that address?

A. Yes, sir. Sergeant Hutchison and a couple of Chicago policeman went in, and I stayed in the car with Smith.

Q. Then that's all you know. You stayed in the car while some Chicago police and Sergeant Hutchison went in, is that right?

A. Yes, sir.

Q. What did you next see? Did they come out of there?

A. No. There was nobody in there.

Q. I say, did they come out?

A. Yes, sir.

Q. Did they have anybody with them?

A. No, they didn't.

Q. Now, when was that?

A. That was about four o'clock the 29th of May.

Q. May 29th at four o'clock what? A.M. or P.M.?

A. A. M.

The Court:

Q. P. M., did you say?

A. A. M.

Q. It was in the morning?

A. Yes, sir, in the morning.

Mr. Brown:

Q. All right. What did you next do? You had Smith [fol. 114] with you, did you?

A. We had Smith with us, yes, sir.

Q. All right.

A. We come back to the station. That might have been four or five o'clock. We come back to the station, and we went home and got some sleep.

Q. All right. What did you next do?

A. We came back about five o'clock.

Q. Yes?

A. And we took a statement from Smith.

Q. What did you next do after that?

A. We went back to this hotel again and talked to the manager.

Q. Is that back to the Maryland Hotel?

A. Yes, sir.

Q. Did you take Smith with you?

The Court: The Maryland Hotel or the New Drake Hotel?

Mr. Brown: Pardon me, Judge, the New Drake Hotel.

The Witness: A. No, sir, we didn't take Smith with us.

Mr. Brown:

Q. You and Hutchison and who else? Anybody else?

A. No, sir. Hutchison and I and the manager went into the room.

[fol. 115] Q. I didn't hear what you just said.

A. Hutchison and myself and the manager of the hotel went into the room.

Q. Was there anybody there?

A. No, there was nobody there, but we looked under the mattress——

Q. (Interposing) Just a moment, please. Now, how long were you in the room at that time?

A. I imagine about fifteen minutes.

Q. After you left there, where did you go?

A. We went back to our station from there.

Q. And that was the morning of May 29th, is that right?

A. Yes, sir.

Q. What was the next thing you did in connection with this case?

A. In questioning various people, we learned that——

The Court:

Q. I'm sorry, I'm getting confused with these times. I thought it was four o'clock in the afternoon that you were at the New Drake Hotel first.

A. First; and then we went back there again.

Q. You went back the next morning?

A. We went back the next afternoon.

Q. That would be the 30th?

A. That evening.

Mr. Brown: No. Four in the morning and, then, the same afternoon. It's still the 29th.

[fol. 116] The Court: Oh, four in the morning, the first time?

Mr. Brown: Yes, the first time.

The Court: All right.

Mr. Brown:

Q. And the second time was? Let's get it straight.

A. The early evening.

Q. Still the 29th, however?

A. Yes, sir.

Q. Then you say you came back to the station. I asked you what you did next, and you said you are doing what? Go ahead.

A. We learned that Blackie——

Mr Geter: Object.

The Court: The objection is sustained.

Mr. Brown:

Q. I say, what did you do, not what you learned. What did you do next?

A. Well, we made a search for this fellow Blackie, and we were looking for him.

Q. You were looking for a man named Blackie?

A. Yes, sir.

Q. Where were you looking for him?

A. Well, he had moved from this Maryland address where he had been staying with Anderson.

Q. Yes?

A. And we found out that he was going——

[fol. 117] The Court: Not what you found out; just what you did.

The Witness: Well, later on—our investigation went over a couple of days.

Mr. Brown:

Q. All right, you are still looking for Blackie.
A. We are still looking for Blackie.
Q. Go ahead.
A. We went to an address at 4201 Ellis Avenue.
Q. When was that about?
A. That was the 5th of June.
Q. This is now June 5th?
A. June 5th.
Q. You say you went where?
A. 3201 Ellis Avenue.
Q. 3201?
A. 4201, I'm sorry.
Q. 4201 Ellis?
A. Yes?
Q. And what kind of building was that?
A. That's a large building with many rooms in it. It is a hotel.
Q. Has it got a name?
A. I don't believe so. No, it didn't have a name.
Q. Pardon me?
A. No, it didn't have a name.
Q. But it's large and it's a hotel?
[fol. 118] A. Yes, sir.
Q. What time did you go there?
A. About three-thirty in the afternoon.
Q. That would be 3:30 p. m.?
A. Yes, sir.
Q. All right, where did you go there?
A. We talked to the proprietor of that building, his wife and himself, and he informed us——

Mr. Geter: Object to what he informed you.
The Court: the objection is sustained.

Mr. Brown:

Q. After talking to him, what did you do?
A. We learned that——
Q. (Interposing) Not what you learned. Just what did

you do after you talked to him? We know you learn things every time you talk to people, but what did you do next?

A. We went to Room 400.

Q. Who was with you?

A. Sergent Hutchison.

Q. What did you do when you got there?

A. We got in Room 400, and we saw a radio that was also in the room at the Maryland address.

Mr. Geter: He saw what, Judge?

Mr. Brown: He saw a radio.

Q. You saw a radio which you had previously seen at the Maryland address?

A. Yes, sir.

[fol. 119] Q. In the twenty and one-half room?

A. Yes, sir.

Q. All right.

A. So we left the building, went out and sat in our car, parked about a quarter of a block away from the entrance, and about a half hour later a yellow cab pulled up and Anderson got out of the cab.

Q. All right. That is the Anderson whose name we have mentioned here several times?

A. Yes, sir.

Q. Do you know his first name now?

A. No, I don't, offhand.

Q. Would you know it if you heard it?

A. Yes, sir.

Q. Was it Fred Anderson?

A. Fred Anderson, yes, sir.

Q. Go ahead.

A. We drove up to the building and went up the front stairs and got him in the front hall and questioned him and took him out to our car, and Fred Anderson was wearing a watch and a ring at the time from the robbery.

Mr. Geter: I object to that, Judge. Just a moment. Fred Anderson isn't on trial here. He should be, but he isn't.

[fol. 120] Mr. Brown: Neither is the cab, your Honor.

The Court: Is that your only objection?

Mr. Geter: Yes, that's my only objection.

The Court: The objection is overruled.

Mr. Brown:

Q. I show you People's Exhibit No. 11 and ask you if you have ever seen these before. That is a group exhibit consisting of a ring and watch.

A. Yes, sir.

Q. Where did you first see those articles?

A. Fred Anderson was wearing both of them.

Mr. Brown: That is a Buloya watch, your Honor, with the sweep second hand and a small man's diamond ring.

Q. You say you talked to Anderson there; either you or Hutchison took those exhibits. Which one of you took them from Anderson?

A. Hutchison took them.

Q. That was downstairs, was it?

A. That was downstairs, yes, in the squad car.

Q. What did you next do?

A. We asked him where he got this jewelry.

Q. Yes?

A. And he said he had gotten——

Mr. Geter: Object to what he said.

[fol. 121] Mr. Brown:

Q. All right. Then what did you do?

A. Then he told us——

The Court: No, not what he told you; just what did you do.

The Witness: Then we proceeded to the Evans Hotel.

Mr. Brown:

Q. The Evans Hotel?

A. 6101 Evans Avenue.

The Court:

Q. What was that address?

A. 6101 Evans Avenue.

Mr. Brown:

Q. You said 6101 Evans, did you?

A. Evans Avenue.

Q. And that is in Chicago?

A. Yes, sir.

Q. Did Anderson go with you?

A. We left him in a squad car with a couple of Chicago policemen.

Q. Where did you go?

A. We went to the Evans Hotel.

Q. Then what did you do when you got there?

A. Anderson had given us a key.

Mr. Geter: Object to that, Judge. Anderson had given him.

Mr. Brown: He had given him a key. There's nothing wrong with that.

Mr. Geter: There's something wrong with it, too. There [fol. 122] is a whole lot wrong with it.

The Court: The objection is overruled.

The Witness: Anderson had given us a key to the hotel room where he said he was staying.

The Court: Not what he said.

Mr. Brown:

Q. He gave you the key. What was the room number?

A. I believe it was 412.

Q. That's your guess?

A. That's my guess.

Q. All right. Of what hotel?

A. The Evans Hotel.

Q. And when you got to the Evans Hotel, did you go to some room in that hotel?

A. Yes, sir. We went to the desk and informed them that we were——

The Court: Not what you informed them.

The Witness: We proceeded to go to this room, put the key in the door, and opened the door.

Mr. Brown:

Q. What did you find when you opened the door?

A. We found Morgan. Morgan was in bed with a girl friend and there was another girl friend sitting in the room.

Q. What time was that?

A. About five-thirty in the afternoon.

[fol. 123] Q. About five-thirty in the afternoon?

A. Yes, sir.

Mr. Geter: I am objecting to all of that testimony, Judge, on the ground that this search was illegal.

The Court: Your objection is overruled.

Mr. Geter: Everything that he testified to is prejudicial to Morgan.

The Court: The objection is overruled.

Mr. Brown:

Q. Where was Morgan at the time?

A. He was in bed.

Q. And what did you do in the room there?

A. We asked him to get out of bed, and we made a hasty search of the room, and on the dresser was a gun.

Q. On the dresser?

A. Yes, sir. And we also found a watch in the room.

Q. Just a moment. I show you People's Exhibit No. 1 for identification and ask you whether or not you ever saw that before?

A. Yes, sir. That's the gun that was on the desk, on the dresser, in the hotel room.

Q. Where Morgan was?

A. Where Morgan was sleeping.

Q. Who took it?

A. Hutchison picked it up off the dresser.

[fol. 124] Q. Is this the gun, as you see it now,—is that the gun that Hutchison took from that dresser?

A. It is the same gun of Spanish make. It is marked.

Q. Did you examine it at the time?

A. Yes, sir.

Q. Was it loaded or unloaded?

A. Yes, sir; five bullets.

Mr. Geter: Object to that, Judge. The best evidence, if it was loaded, would be the bullets or cartridges, whatever they are.

The Court: The objection is overruled.

Mr. Brown:

Q. And what next did you say you found there?

A. A watch and a ring.

Q. A watch and a ring?

A. Taken from the jewelry store.

Q. I show you People's Exhibit 7 and ask you if you ever saw those things before?

That is a group exhibit, you Honor, consisting of a watch and two rings.

A. Yes, sir. They were taken from Morgan.

Q. What part of Morgan were they taken from?

A. They were on the dresser, also.

Mr. Brown: Just so we will know what we are talking about, your Honor, this is a group exhibit consisting of a [fol. 125] Gruen Curvex watch, with a gold band, and a small ring, which is very similar in make to the band of the watch itself, and then a large man's ring, with what appears to be a white stone in the center and two red stones on either side.

Q. Did you find anything else in that room that you recall?

A. No, I don't recall.

Q. What did you do then?

A. We told him to get dressed, and we were going to take him into the station. So he says, "I may as well take all my clothes." He asked us if we'd pack his clothes for him and take that along in grips, which we did.

Q. You waited while he packed his suit?

A. His clothes.

Q. A suit case, that's what I mean.

A. Yes, a suit case.

Q. Where did you take him then?

A. We took him back to the Wabash Avenue Station where Anderson was sitting in a squad car in front of the station, and we took both of them to 11th and State.

Q. And that was police routine, wasn't it, since it was a Chicago arrest

[fol. 126] A. Yes, sir. That's a ruling we have to run them through the Bureau.

Q. You were Oak Park police in Chicago, and so you took them to the Detective Bureau in Chicago?

A. Yes, sir.

Q. About what time was that?

A. Oh, I imagine we got them down to the Bureau about six-thirty, seven o'clock.

Q. What did you do next?

A. We called Mr. Barr to come down.

Q. And what time did Mr. Barr get down there, do you recall, about?

A. No, I don't; but shortly after.

Q. What did you do next?

A. Well, Mr. Barr identified Morgan as the man who had robbed him.

Q. Did Mr. Barr, in your presence, look at these various exhibits of rings and watches at that time?

A. Yes, sir.

Q. What did you do next?

A. Then we brought him out to Oak Park, out to our station.

Q. About what time of the night or morning was that by the time you got all that all finished?

A. By the time we got through at the Bureau, and every-[fol. 127] thing, it was about one in the morning.

Q. Then you went to Oak Park, did you?

A. Yes.

Q. When you got to Oak Park, what did you do?

A. Hutchison took the statement from Anderson; then he took a statement from Morgan.

Q. Now, this is on the morning of June 6th?

A. The 6th.

Q. And you say he took a statement from Anderson?

A. Yes, sir.

Q. And then, later, a statement from Morgan?

A. From Morgan.

Q. Then what did you do?

A. About four o'clock in the morning, four-thirty in the morning, he told us that we might be able to pick up the third party to the robbery, whose name was a fellow by the name of Jennings.

Mr. Geter: I object to that, Judge.

The Court: On what grounds?

Mr. Geter: On the ground that Jennings wasn't there. He's telling about something that somebody told him about going out, what he could do; conversation.

Mr. Brown: His objection is well taken, your Honor; if you don't mind my saying so.

[fol. 128] The Court: There is no motion made. Does the State wish to withdraw the question?

Mr. Geter: I objected to the question, Judge.

The Court: The State has withdrawn the question.

Mr. Brown: Yes, I will withdraw the question, your Honor.

Q. After you finished the statement now from Morgan, did you have a talk with Morgan other than what he had put into the statement?

A. Yes, sir.

Q. All right. Then, pursuant to that talk that you had with him, what did you do, where did you go?

A. We went to 5303 South Dearborn Street.

Q. Did you say 5303 Dearborn?

A. South Dearborn, yes, sir.

Q. Is that in Chicago?

A. Yes, sir.

Q. And what kind of a dwelling place building was there or what was there?

A. It is a two-flat building.

Q. What did you do when you got there?

A. We knocked on the door, the front door, and a woman put her head out the window and says, "Just a minute." She came down and opened the door, and we went up there. We went up into the second floor apartment, and a couple of them went to the front of the house, and I went to the [fol. 129] back, and I seen a light——

Q. Who was with you, by the way?

A. Lieutenant Nester and Sergeant Thor.

Q. Go ahead.

A. I went to the back, and I seen a light in the room. I didn't know what kind of a room it was, but I opened that door, and it was a bath room, and Jennings was in there. putting his clothes on.

Q. What time was this?

A. It was almost six o'clock in the morning.

Mr. Geter: On what day was this?

Mr. Brown: We are to June 6th now, counsel.

The Witness: The 6th.

Mr. Brown:

Q. Did you talk to him?

A. Yes, sir.

Q. What did you say?

A. We asked him about the robbery. He also was wearing a ring from the robbery.

Q. I show you People's Exhibit No. 8, a small gold ring with a stone in the center which looks like a diamond to me, and ask you if you have ever seen that before?

A. Yes, sir.

The Court: Is that 8?

[fol. 130] Mr. Brown: Yes, your Honor.

The Witness: Jennings was wearing that when he was picked up.

Mr. Brown:

Q. At the time that you picked him up at this address that you are just describing here?

A. Yes, sir.

Q. Did you ask him anything about that?

A. Yes, we asked him about it.

Q. What did he say, do you remember?

A. I believe he said he bought the ring.

Mr. Geter: I object to what he believed.

The Court:

Q. Is that your best recollection?

A. That's my best recollection, that he purchased it.

Mr. Brown:

Q. Did he say anything about how he happened to be in the bath room?

A. No, he didn't. He didn't have an explanation for that.

Q. Were all his clothes in the bath room?

A. Yes, he had his trousers there and he was just putting his shorts on. He just about had his shorts on when I opened the door.

Q. What did you do next?

A. Well, we took him downstairs and put him into the squad car and took him to 11th and State, to the Bureau, to [fol. 131] run him through the Bureau.

Q. When you say "run him through the Bureau," that is the procedure of the Chicago Police Department, is it?

A. Yes, sir. They fingerprint him and take his picture.

Q. That is part of the routine of the police in Chicago?

A. They want a record of that.

Q. You just gave him to the Chicago Police to do what they usually do with any prisoner arrested in Chicago, is that it?

A. Yes, sir.

Q. All right. Then what did you do next?

A. We took him out to Oak Park.

Q. Do you recall about what time you got to Oak Park then?

A. About eight o'clock.

Q. 8:00 a.m.?

A. 8:00 a.m., the 6th.

Q. What did you do then?

A. We brought him up to Lieutenant Nester's office.

Q. Yes?

A. And Morgan was also in the office.

Q. All right.

A. Lieutenant Nester showed him a statement made by Morgan and let him read it.

Q. I show you People's Exhibit No. 15 and ask you if you [fol. 132] ever saw that before?

A. Yes, sir.

Q. Is that the statement that you just referred to?

A. That's the statement that he showed Jennings.

Q. So, at the time he showed it to him, was Jennings' signature on it at that time?

A. No, sir, it wasn't.

Q. And you say that Jennings then read this statement of Morgan's?

A. Yes, sir.

Q. And were you present when the signature of Jemings was affixed to it?

A. Yes, sir. He made a correction, I believe, and he said he'd sign it under one condition, that he make a correction in it, in the statement.

Q. All right. I ask you to look at the second page of this statement. Is there a correction there? Just yes or no.

A. Yes, sir.

Q. And is that correction made in ink?

A. Yes, sir.

Q. Is there a signature immediately under the correction?

A. Yes, sir.

Q. Whose signature?

A. Jennings' signature.

Q. Is that the correction, then, that he made on the second page?

A. Yes, sir.

Q. Then I show you the signatures on the three pages [fol. 133] under the signature of Morgan. Were those affixed in you presence?

A. Yes, sir.

Q. By whom?

A. By Jennings and Morgan.

Q. I say, was the signature of Jennings affixed in your presence at that time that you are talking about now?

A. Yes, sir, by Jennings.

Mr. Brown: May the record show that that is one of the two exhibits that I read to the jury, your Honor, a couple of days ago or a few days ago? That is just one of them that I read, 15.

Q. Then, after Jennings read that statement of Morgan's and affixed his signature to it, after making the correction, then what was the next thing you did in connection with this investigation?

A. We asked him if he cared to make a statement.

Q. Jennings?

A. Yes, sir.

Q. And what did he say?

A. He says, "Yes," he'd make one.

Q. All right. Then what was the next thing done in this case?

A. So we made a joint statement of Morgan and Jennings.

Q. When was that made then?

A. That was about six o'clock that evening.

[fol. 134] Q. Showing you People's Exhibit No. 12 in evidence, have you ever seen that before?

A. Yes, sir.

Q. And is that the statement just referred to as the joint statement which was made at six o'clock that evening?

A. Yes, sir.

Q. When you say "six o'clock," is that the time it started?

A. Yes, I believe so.

Q. That was June 6th, the date it bears, is that right?

A. Yes, sir.

Q. Then what was the next thing you did in connection with this case?

A. Mr. Barr was called.

Q. I am assuming now that every once in a while you had some time to sleep, did you?

A. Yes; from about eight o'clock that morning, nine o'clock that morning, we slept until about four.

Q. When I say, "the next thing you did in this case," I am excluding the times you went home to sleep. I am talking about the times you were actively engaged in this investigation.

A. Yes, sir.

Q. What was the next thing you did in regard to this joint statement?

A. Called Mr. Barr to identify these men.

[fol. 135] Q. Pardon me?

A. To try to identify these men.

Q. Was Mr. Barr present during the joint statement?

A. Yes, sir.

Mr. Geter: Judge, I am going to object to Mr. Brown leading the witness now.

Mr. Witness: Mr. Barr was present during the taking of the joint statement.

Mr. Geter: Pardon me. Judge, first he has taken the statement, identified them, and now he says he called Mr. Barr to come to try to identify the defendants, and then he comes back with the leading question that I objected to. I would like for the Court to rule on it.

The Court: Objection sustained.

Mr. Brown:

Q. What was the next thing you did after the joint statement? That was the night of June 6th.

A. The 6th, about six p.m. After the joint statement—I don't recall.

Q. I mean, after it was all over, not at the beginning of it. How long did it take, by the way?

A. To take this joint statement?

Q. Yes.

A. Oh, about two hours.

[fol. 136] Q. Then, after it was all over, what was the next thing you did, then, in your investigation?

A. Well, we had the last man in the robbery who was identified.

Q. What last man?

A. By Mr. Barr.

Q. What last man?

A. Jennings.

Q. What was the next thing you did?

A. I believe I went home rather early that night because we were going to Cleveland the next day.

Q. What time did you get to the station the next day?

A. About nine o'clock in the morning.

Q. Who was there at the station at nine o'clock in the morning?

A. I met Sergeant Hutchison.

Q. You met Hutchison?

A. Yes, sir.

Q. What did you do?

A. We took Morgan in Hutchison's car and drove to the Federal Building in the Loop.

Q. Did anybody go with you?

A. Mr. Barr, the jeweler.

Q. Then you met Hutchison and Barr, is that right?

A. We met Mr. Barr, yes, sir.

Q. So that you and Hutchison and Barr and Morgan then [fol. 137] left the Oak Park Station, and where did you go?

A. We went to the Federal Building, the F.B.I., in Chicago.

Q. Who did you see down there?

A. An agent by the name of Mr. Dunne.

Q. How long did you remain in Mr. Dunne's office?

A. Possibly an hour.

Q. And then, when you left Dunne's office, what did you do next?

A. We drove with Morgan to Cleveland, where he told us he'd try and help us recover the jewelry that they sold there.

Mr. Geter: I move that—I am objecting to all that testimony, Judge.

Mr. Brown:

Q. When had he told you?

The Court: Just a minute. There is an objection. What is the objection?

Mr. Geter: I am objecting because he was under duress during the time that he made this trip to Cleveland.

The Court: The objection is overruled.

The Witness: A. He told us that on the sixth day, that he'd go to Cleveland with us and help us recover it.

[fol. 138] Mr. Brown:

Q. On the 6th day, he told you that he'd go to Cleveland and help you?

A. Help us recover the jewelry.

Q. So you left on the morning of the 7th?

A. Yes, we left on the morning of the 7th.

Q. Did you arrive at Cleveland?

A. Yes, sir.

Q. About what time?

A. About ten o'clock that night, the 7th.

Q. What did you do with Morgan when you got to Cleveland?

A. We locked him in the County Jail.

Q. And as whose prisoner?

A. As our prisoner. We locked him there as our prisoner, just transit.

Q. How long did he stay there?

A. Well, he was there from that Monday until, I believe, we went back on Thursday. We came back to Oak Park the next Thursday.

Q. The next Thursday?

A. Yes.

Q. What day was this, do you remember now, the 7th?

A. Monday.

Q. It was on a Monday?

A. Yes.

Q. And you didn't leave Cleveland to come back until the Thursday of that same week?

A. The following Thursday.

[fol. 139] Q. Now, in the meantime, while you were in Cleveland, did you see any F.B.I. men there?

A. Yes, sir. We worked with two of the F.B.I. agents there.

Q. What were their names, if you recall?

A. Corbett was one of them.

Q. Pardon me?

A. A gentleman by the name of Corbett was one of the agents. I don't recall the other agent's name.

Q. Would you recall it if you heard it?

A. Yes, sir.

Q. I'll make a guess at it. Was it something like Blackthorn, or something like that?

A. Blackhorn.

Q. Blackhorn?

A. Yes; or Blankehorn.

Q. Did Morgan talk to them in your presence?

A. Yes, sir.

Q. Did you see any Cleveland people at the station in Morgan's presence?

A. Yes, sir.

Q. Who?

A. The first fellow I saw, the first fellow that was picked up in regards to this jewelry that was sold there, was a fellow by the name of Mike.

Mr. Geter: Judge, I object to that and move that it be [fol. 140] stricken. It is not responsive.

The Court: Objection overruled.

Mr. Brown:

Q. Did you see him in the presence of Morgan?

A. Yes, sir.

Q. What did Morgan say or do at that time?

A. Morgan identified him as the contact man, the man he contacted to dispose of the jewelry.

Q. Did you see any other Cleveland citizen?

A. Yes. Then there was another gentleman picked up. I don't recall his name at all. But he, in turn, told us about——

Q. (Interposing) Did you see him in the presence of Morgan?

A. Yes, sir.

Q. What did he say to you in the presence of Morgan?

A. Morgan also identified him as the man that Mike had talked to for him.

Q. What, if anything, did he say then in the presence of Morgan, if anything?

A. He said that he——

Mr. Geter: Just a minute. I object to that, Judge. It is not the best evidence, what somebody said in the presence of

the defendant. That wouldn't make it good evidence. Bring that somebody down here and let him testify.

[fol. 141] The Court: The objection is overruled.

Mr. Brown:

Q. Proceed.

A. He said that the man who bought the jewelry was a man by the name of Fein.

Q. All right. Did you eventually have Fein brought in the presence of Morgan?

A. Fein was brought in, yes, sir, in the presence of Morgan.

Q. Later on, did you go to the Federal Court House there?

A. Yes, sir.

Q. And in whose presence were you there?

A. The District Attorney, I believe it was.

Q. Well, if you can't think of his name, just tell us what he was.

A. He was the prosecuting attorney, the Federal prosecutor.

Q. Was Morgan there?

A. Yes, sir.

Q. Was there a hearing there?

A. Yes, sir.

Q. Did Morgan testify under oath there?

A. Yes, sir.

Q. Was Mr. Fein present at the time?

A. Yes, sir.

Q. Will you tell us what, if anything, you heard Morgan say in this hearing in the Federal Building before a United [fol. 142] States Commissioner?

A. He testified as to how he made his contact. First, he rode around in a cab and the cab driver told him to see a fellow by the name of Mike. He finally made contact with this Mike and through Mike, Mike introduced him to this other man there in Cleveland, and through him they contacted Fein, and the deal was finally arranged in a clothing store.

Q. What deal?

A. To buy this jewelry off of Morgan.

Q. What jewelry?

A. From the Barr Jewelry Store robbery.

Mr. Geter: Judge, I am going to object to all of this testimony. Number one, if he is going to tell what Morgan said, let him tell it. I object to Mr. Brown leading the witness. What did he say? What jewelry? What time?

Mr. Brown: Those sound like questions to me, your Honor.

Mr. Geter: They are questions, but you are telling him the answer.

The Court:

Q. Just state as nearly as you can remember what Morgan testified.

Mr. Brown: I have more or less finished with this.

[fol. 143] Mr. Geter: Judge, he's finished now, Judge.

The Court: I thought you were objecting to anything further. What is the objection?

Mr. Geter: My objection was against him leading. Of course, before he finished answering, he was telling him, or trying to tell him.

Mr. Brown: His description of my leading were all questions. What jewelry? What? Why? They were all questions.

Mr. Geter: He might have been testifying about some other jewelry.

Mr. Brown: I said, "What jewelry?" and he said, "The Barr jewelry robbery."

The Court: The objection is overruled.

Mr. Brown:

Q. Now, then, after this hearing before this Federal Commissioner, what did you do next?

Mr. Geter: I object to any further questions along the line of what they did when they were in Cleveland.

The Court: The objection is overruled.

The Witness:

A. We drove back to Oak Park. We completed our business there in Cleveland.

Mr. Brown:

Q. Did you take Morgan back with you?

A. Yes, sir.

Q. Now, while you were in Cleveland, did you go any-
[fol. 144] place else in connection with this Barr jewelry robbery, other than what you have already testified to?

Mr. Geter: I object to that question: anything in regard to the trip to Cleveland.

The Court: Will you read the question, please?

(Question read.)

The Court: He may answer.

The Witness:

A. No, I didn't. I stayed at the Police Department. Sergeant Hutchison went to——

The Court: Not unless you know.

Q. You weren't with him, were you?
A. No, I wasn't with him.

Mr. Brown:

Q. That's right. I just found out. Hutchison went to places while you were not along, is that right?
A. Yes, sir. I had various people to watch at the station, and I stayed there.

Mr. Brown: You may cross examine.

Cross-examination.

By Mr. Geter:

Q. Officer Piotter, I believe you said that you made the arrest of Smith on May 26th. Is that the correct date?
[fol. 145] A. May 28th.
Q. Where is the first place that you saw Smith?
A. The first place I saw Smith was the Stanton Avenue Police Station.
Q. Who was there at that time?
A. Two Lincoln Park Police, Sergeant Hutchison and myself.
Q. Was this gas station attendant man there at the time?
A. Yes, sir.
Q. How long did you stay at the Stanton Avenue Police Station with Smith?

A. Just a short time. About a half hour.

Q. And, then, you took him to the Bureau, is that right?

A. Took him to 11th and State, yes, sir.

Q. Did you see Mr. Barr at 11th and State?

A. Yes, sir.

Q. That same day, the 28th?

A. Yes, sir.

Q. Were you there when he said that Smith looked like the man that had tied him up?

A. He made a remark about his eyes looking like it. He made a remark about his eyes looking similar to the man that held him up.

Q. His eyes looked similar to the man that had tied [fol. 146] him up?

A. Yes, sir.

Q. You say that when you first saw Mr. Barr at his jewelry store on the day of this supposed robbery, you were there with Officer Hutchison, weren't you?

A. The day of the robbery?

Q. Yes.

A. Yes, sir, I was there.

Q. Did you hear Mr. Barr describe the man who had tied him up that day?

A. We got a description of him, yes.

Q. Did he tell you at that time that the man was wearing dark glasses?

A. Part of the time; and that he had taken them off.

Q. Well, what part of the time wasn't he wearing dark glasses?

A. I don't recall whether it was the beginning of the robbery or at the end.

Q. But he took them off, so, therefore, he could say that this man's eyes looked like the other man, is that right?

Mr. Brown: I object, your Honor, to the form of the question.

The Court: The objection is sustained.

Mr. Geter:

Q. Was there anything else that Mr. Barr said besides [fol. 147] that he looked like him through the eyes?

A. No, sir, not in my presence. I think that was all that I heard him say.

Q. By the way, did you at that time have Marcus Williams at the station there?

A. Marcus Williams was at the Stanton Avenue Station.

Q. I mean, after you finished with him over there and the man said he wasn't the man, did you let him go home?

A. I believe so.

Q. And do you remember ever seeing him after that?

A. No, I don't.

Q. You never saw him in Oak Park at all, is that right?

A. No, sir.

Q. So far as you know, he has never been out there?

A. No, sir.

Q. You said something about Smith showing you a clipping of that robbery. Did he voluntarily take out his wallet and tell you here is a clipping that he had of this robbery?

A. He was showing me his identification, and he didn't have anything else there to obstruct the view, and I asked him what the paper was that he had in there. He took it out, and I saw that it was a clipping of the robbery.

[fol. 148] Q. He took it out and showed you that he was well informed of the robbery?

A. Yes, sir.

Q. Did he give you that paper?

A. No, I put it back in his wallet.

Q. You gave it back to him?

A. Yes, sir.

Q. So far as you know, he still has it?

A. No, I don't believe so. When we searched him at the station all of that is taken away, and if he wants it for evidence, I believe we'd keep it.

Q. Did you ever see that clipping after that?

A. No, I never saw it after that. No.

Q. You took Smith to the Oak Park Police Station on the night of the 28th after you had been to the Bureau, is that right?

A. Yes, sir.

Q. Did you see anybody hit or strike Smith?

A. No, sir.

Q. At no time?

A. No, sir.

Q. And everything that he did was free and voluntary? As soon as you arrested him, he told you that he wanted to do it?

A. Shortly afterwards, he told us that he might be able to point out the fellows that done it on the south side.

[fol. 149] Q. He was going to help you solve the case, in other words?

A. That's right.

Q. And if he says you hit him in the mouth and cut your fist, he wouldn't be telling the truth, would he?

A. He wouldn't be telling the truth, no.

Q. You never did hit him, did you?

A. No.

Q. Did you ever hear any hollering or noise around the station as anybody else might have been hitting him?

A. No, sir.

Q. They were just arrested and they were brought in and asked a few routine questions?

A. They were questioned, yes, sir.

Q. I see. Now, this statement here, People's Exhibit 15. When was that taken? When was it started?

A. This was taken June 6th. It was started, I would say, about two o'clock in the morning.

Q. This is the morning of June 6th?

A. June 6th.

Q. This is the statement that you said that Morgan made; is that right?

A. Yes, sir.

Q. And then, the following morning, they let Jennings see it, the morning of the—I mean, later on in the morning? It was finished about four-thirty in the morning, is that right?

A. Yes, sir.

[fol. 150] Q. And was Morgan given any kind of inducement to make that statement?

A. No, sir.

Q. You told him, at least somebody in your presence told him, that he could have a lawyer before he made the statement is that right?

A. Yes, sir.

Q. And you also told him that it might be used against him if he did make it?

A. Yes, sir.

Q. And he said he was going to make it anyway, is that right?

A. Yes, sir.

Q. And if Morgan said that you stepped on his foot, or anybody stepped on his foot and mashed his toes, and did anything to him in a brutal way, he wouldn't be telling the truth, would he?

A. No, sir, he wouldn't.

Q. This paper now is in the same condition as it was at the time that these signatures were affixed on here? You looked at it, I believe, Do you want to see it again?

A. No, sir.

Q. How about those little red marks up there, "Copy"? Was that on there when the thing was signed?

[fol. 151] A. No, sir.

Q. And you saw Morgan sign each one of these papers?

A. Yes, sir.

Q. Were you present when Morgan was asked to make another statement?

A. Yes, sir.

Q. And who asked him to do that?

A. Lieutenant Nester.

Q. That was later on the same day after this one was taken, isn't that right?

A. After that one was taken, we went out and picked Jennings up and brought him in about eight o'clock. Then he was shown this statement that Morgan made.

Q. Then he signed it, didn't he?

A. Jennings signed his statement.

Q. Yes?

A. And he also made a joint statement?

Q. He signed this one free and voluntarily, though, didn't he?

A. Yes, sir; after making the correction.

Q. Do you know who made this correction on here?

A. I believe the lieutenant did, Lieutenant Nester. It's not my writing.

Q. Were you present when the correction was made?

It says here, "Exception by Jennings. He took ring." [fol. 152] That appears to be the correction?

A. Yes, sir.

Q. And then, of course, were you present when Jennings signed right under that?

A. Yes, sir.

Q. And, then, when he put on his signature?

A. Yes, sir.

Q. By the way, what time did Jennings come into the station that morning?

A. About eight o'clock.

Q. Do you know where he came from?

A. Where Jennings came from?

Q. Yes, sir.

A. We brought him in from 11th and State.

Q. Do you know whether he could have been brought in from River Forest?

A. No, sir.

Mr. Brown: I object, your Honor, at this time to the speculation.

The Court: The objection is sustained.

Mr. Geter:

Q. You don't know, then, where he was brought in from? You just believe that he was brought in from 11th and State?

A. No, sir. I know where he was brought from.

Q. You know now that he was brought in from 11th [fol. 153] and State?

A. Yes, sir.

Q. Who brought him into the station?

A. I did.

Q. You did?

A. Yes, sir.

The Court: Mr. Geter, will you come over here, and Mr. Brown?

(Whereupon, a discussion was had between counsel and the Court outside the hearing of the jury and the Court Reporter, after which the following proceedings were had:)

The Court: We will adjourn until tomorrow morning at ten o'clock.

(Whereupon an adjournment was taken to ten o'clock a.m. of the following day, Tuesday, January 4th, 1949.)

[fol. 154] Tuesday, January 4th, 1949, 10:00 o'clock a.m.

Court met pursuant to adjournment.

Present: Mr. Brown, Mr. Phillips, Mr. Geter.
The Court: Bring in the jury.
Mr. Geter: May I proceed?
The Court: Proceed.

EDWARD M. PIOTTER, resumed the stand and testified further as follows:

Cross examination (Continued).

By Mr. Geter:

Q. Mr. Piotter, you testified, I believe, yesterday on direct examination that you received a call on May 24th about 12:50, is that correct, sir?
A. Approximately about 12:50.
Q. About this robbery?
A. Yes, sir.
Q. And then you proceeded to go *go* 1031 West Lake
[fol. 155] Street, Mr. Barr's jewelry store, is that correct?
A. Yes, sir.
Q. And I believe you also testified that some other officers had been there prior to the time that you had gotten there?
A. Yes, sir.
Q. Do you know who they were?
A. Well, there was Officer Jirsa who was in there.
Q. Then would you say that you arrived at the jewelry shop about one p.m. on that day?
A. No; a couple of minutes after we received the call.
Q. When you arrived there, what was the first thing that attracted your attention?
A. Well, a broken counter, and the jewelry boxes strewn about the place, the upset condition of the store.
Q. Did you see Mr. Barr at that time?
A. Yes, sir, I did.
Q. Where was he?
A. He was in the store at that time.
Q. I mean, whereabouts in the store?
A. In his office, when we first saw him.
Q. Where is that?
A. He offices right off the store.

[fol. 156] Q. What was his appearance? Was he dressed fully or what did he have on?

A. He was dressed. I don't know whether he had his suit coat on or not. I couldn't be sure. But he was very nervous.

Q. Did he have anything over his eyes?

A. No, not at that time.

Q. Did he have anything over his mouth?

A. No, sir.

Q. You and Sergeant Hutchison arrived there at the same time, didn't you?

A. Yes, sir.

Q. I believe you said that two days later, the 28th, you had an occasion to go to the Stanton Avenue Police Station in Chicago?

A. On the 28th? We went to the Stanton Avenue Station in Chicago four days later.

Q. Yes. The 28th.

A. That's right.

Q. And when you arrived there, you found a man, did you?

A. Yes, sir.

Q. A colored man?

A. Yes, sir.

Q. And outside you saw this taxi cab?

A. Yes, sir.

Q. Did you bring this attendant with you, or did you call him, or how did he get there?

[fol. 157] A. No, we drove him out to the Stanton Avenue Station.

Q. At the same time you went you took him?

A. Yes, sir.

Q. Then he looked this fellow over and said that wasn't the man, is that right?

A. Yes, sir.

Q. That's the man, I believe, by the name of Marcus Williams?

A. Yes, sir.

Q. And Marcus Williams was locked up at that time in the station?

A. No, sir. I stayed there with Marcus Williams.

Q. How long had you been there before you saw Arthur Smith?

A. Oh, I imagine I was there an hour before Arthur Smith came in.

Q. By the way, about what time would you say that was?

A. About one o'clock in the afternoon.

Q. One o'clock on the afternoon of May 28th?

A. Yes, sir.

Q. Then, after this, there were no other men in there, there was no line up of men, was there, for anybody to make any identification?

[fol. 158] A. Just police officers.

Q. But there were no other prisoners? I mean, you didn't stand him in line and tell the attendant to pick him out, did you?

A. No, sir, there were colored police officers there and Marcus Williams.

Q. Now, after this identification was made, what did you do, if anything, with Smith?

A. We took Smith to the Bureau at 11th and State.

Q. Did you take Marcus Williams with you, also?

A. Yes, we did.

Q. Then you stayed down at the Bureau for several hours, is that right?

A. Yes. We took them down to the Bureau, and we went to the south side looking for another man, and we come back, and left the Bureau around twelve-thirty.

Q. Twelve-thirty on the morning of the 29th?

A. Yes, sir.

Q. By the way, Mr. Barr was at the station, also, wasn't he, at Stanton Avenue?

A. No, sir.

Q. But he did come to 11th Street while Smith was there, is that right?

A. Yes, sir.

Q. What did you do with Smith about twelve-thirty, [fol. 159] a. m.?

A. Drove him out to Oak Park.

Q. And after you got to Oak Park, what did you do with him?

A. We questioned him, and then we took some statements. We took a statement from Marcus Williams. And, then, Smith told us that if we drove him to the south side he might be able to point out Blackie.

Q. I mean, you took statements from Marcus Williams

and Smith at that time, from twelve-thirty up until what time?

A. We took a statement from Marcus Williams.

Q. And you took one from Smith, also, didn't you?

A. And we took one from Smith, and we went out to the south side.

Q. What time did you finish taking the statement from Smith.

A. I take that back. We didn't take a statement from Smith at that time.

Q. You didn't take a statement?

A. No, sir.

Q. Did you say you brought Smith to the south side later?

A. Yes, sir.

Q. Between the time you took him into the Oak Park Station and the time you left for the south side, what was [fol. 160] Smith doing, if you know?

A. He was sitting in the sergeant's office.

Q. Did you, or anybody, take him downstairs to the lockup?

A. No, sir, not at that time.

Q. Did you see anybody strike Smith during those hours you were there?

A. No, sir.

Q. Did you strike him yourself?

A. No, sir.

Q. And to your best recollection, you say he sat in the office until the time you got ready to come south, is that right?

A. Yes, sir.

Q. Did Smith ask to be brought south or did you bring him?

A. Yes, sir, he volunteered, and he said he could probably help us locate a fellow by the name of Blackie.

Q. And he wanted you to start right away, at four-thirty in the morning?

A. No. That was earlier than that. It was about one-thirty.

Q. But you didn't have time to leave until about four-thirty?

A. No, we left about one-thirty.

[fol. 161] Q. You left for the south side at one-thirty?

A. Yes, sir.

Q. How long did you stay on the south side?

A. Oh, about three, three-thirty, four in the morning, something like that.

Q. Smith was with you all this time?

A. Yes, sir.

Q. Who else was with you?

A. On the south side?

Q. Yes, sir.

A. Sergeant Hutchison and Captain Koerber.

Q. Then, after you left the south side, where did you go about four-thirty?

A. Back to the station.

Q. What did you do with Smith?

A. He sat in the sergeant's office.

Q. How long did he stay in there after you got back?

A. Not very long. When we got back, he said that he could possibly find Blackie living with a boy by the name of Anderson, 6354 Maryland Avenue.

Q. He didn't tell you that while you were on the south side. He told you that after you got back?

A. After we got back.

Q. What did you do, then, after he told you that?

A. We drove out there.

[fol. 162] Q. Came on back to the south side again?

A. We went back to the Maryland address, yes, sir.

Q. Did he give you any reason for not telling you about this fellow when you were already out there?

A. No, he didn't.

Q. And, then, you went back to the south side on the early morning of the 29th. How long did you stay there? That's the second time you came out, is it?

A. That's the second time we went back that morning, yes, sir.

Q. Now, you took him back to Oak Park and he told you something about some fellow named Anderson?

A. Yes, sir.

Q. And, then, you came on back to the south side. How long did you stay out there on the morning of the 29th?

A. It was about five-thirty, six o'clock in the morning, when we got out to Maryland Avenue.

Q. How long did you stay there?

A. Oh, I don't believe it took us over thirty, forty minutes to finish our business.

Q. But you didn't find what you were looking for, is that right?

A. Yes, sir.

Q. By the way, had you been doing any eating or having [fol. 163] any food of any kind up to that time?

A. Were we doing any eating?

Q. Yes. You, Officer, or Sergeant Hutchison,

A. I suppose we grabbed a cup of coffee in between.

Q. Did you have any dinner on the 28th, the evening of the 28th? Did you have any food at all?

A. Yes. We stopped at a restaurant on the south side.

Q. So you stopped to feed yourself and Smith, is that right.

A. Yes, I believe Smith was with us.

Q. Don't you know whether he was or not?

A. No, I couldn't be sure about our eating times.

Q. You brought Smith back to the Oak Park Station again after five-thirty of the morning of the 29th. What did you do with Smith?

A. Took a statement from him at that time.

Q. And as soon as you got back to the station, you started taking a statement, is that right?

A. Yes, sir.

Q. How long did it take you to take that statement?

A. A couple of hours.

Q. That was around nine o'clock then, perhaps, when you were finished?

A. Yes, sir.

[fol. 164] Q. Then what did you do with Smith?

A. We turned him over to the lock-up keeper and he was locked up.

Q. The lock-up keeper locked him up down in the basement of the Oak Park Station?

A. Yes, sir.

Q. And how long did Smith stay down there then?

A. I don't recall how long he stayed down there. We went home and slept and came back around five o'clock.

Q. I mean, when did you see Smith next?

The Court:

Q. Is that five o'clock in the afternoon?

A. Yes, sir.

Mr. Geter:

Q. When did you see Smith after that, after he was locked up around nine o'clock that morning?

A. I don't recall.

Q. Well, was it one day?

A. I couldn't say.

Q. You don't remember?

A. No, sir.

Q. Did you, at any time, take Smith to court?

A. He had a hearing, but it was postponed.

Q. When did you have this hearing that was postponed?

A. The 12th of June.

The Court:

Q. Is that the first hearing?

[fol. 165] A. That was the first hearing, I believe.

Mr. Geter:

Q. When did you first take him to court, I think the question was?

A. We only have court every Tuesday and Friday. He would have had a hearing the closest day to that from the time he was picked up. I believe the first one was continued, and then we were in Cleveland, so it was held over until we got back.

Q. He wasn't taken into court then. At that time it was continued, was he taken into court then?

A. Yes, we took him into court.

Q. What date was that?

A. The 22nd of June he was taken into court on a hearing.

Q. You don't understand what I am talking about. When was he first taken into the court room?

A. I don't recall the exact date but he had a hearing the first day after he was picked up.

Mr. Brown: May 30th came in there, your Honor, which is a holiday, Decoration Day.

Mr. Geter: Just a minute, Mr. Brown, let him tell. He knows when he took him to court. I object to him making any remarks.

Mr. Brown: I have an objection here, too, but I'm not making it.

[fol. 166] The Court: Proceed. He says he doesn't know.

Mr. Geter:

Q. Well, when you answered that you took him on June 12th, what did you mean by that, Mr. Piotter?

A. I thought it was June 12th that he had a hearing?

Q. How's that?

A. I thought he had a hearing coming up June 12th. I may be wrong.

Q. You have been with Smith and Sergeant Hutchison on these investigations, and you went to court with him, didn't you?

A. Yes, sir.

Q. Did you take Marcus Williams to court?

A. No, sir.

Mr. Brown: Object as being immaterial, your Honor.

The Court: The objection is sustained.

Mr. Geter:

Q. Calling your attention to the 5th of June, about three-thirty in the afternoon, do you know where you were?

A. The 5th of June at three-thirty in the afternoon?

Q. About three-thirty.

A. Yes. 4201 Ellis Avenue.

Q. And you stayed over there how long at that time?

A. Oh, at that particular address?

Q. Yes.

A. Possibly an hour and one-half.

[fol. 167] Q. I believe you testified that at that time you got certain jewelry from one Fred Anderson, is that right?

A. Yes, sir.

Q. And did you take this jewelry from him?

A. No. Sergeant Hutchison took it.

Q. He turned it over to Sergeant Hutchison?

A. Yes, sir.

Q. And then you went to 6101 Evans, is that right?

A. Yes, sir.

Q. About what time did you get there?

A. About five-thirty.

Q. I believe you said you had a key that you obtained from Anderson?

A. Yes, sir.

Q. And you took that key and went into the room?

A. Yes, sir.

Q. You went into this room, and when you got in there you saw Morgan?

A. Yes, sir.

Q. And two young ladies, is that correct?

A. Yes, sir.

Q. Now, what did you do, if anything, after you got into this room?

A. I told Morgan to get out of the bed.

[fol. 168] Q. That's all you did?

A. Yes. I watched him.

Q. What did Sergeant Hutchison do? He was with you.

A. He looked the room over.

Q. By "looking the room over," what do you mean by that?

A. He wanted to make a survey of the room as rapidly as possible.

Q. Did he go into any of these dresser drawers?

A. He may have opened a couple of drawers.

Q. He went under the mattress, also, didn't he?

A. I don't recall if he did or not.

Q. You were in there and you observed that when you left the room was upside down, topsy-turvy, is that right?

A. No, sir.

Q. That isn't right?

A. No, sir.

Q. When you got in there, you saw People's Exhibit 1 marked for identification?

A. Yes, sir.

Q. Tell the jury where you saw that.

A. I didn't see it. Sergeant Hutchison picked that up.

Q. You didn't see it. You don't know where it was, then, in the room, do you?

A. All I know is where he told me he found it.

Q. He told you. You didn't see it?

[fol. 169] A. No, sir; only that he showed it to me later.

Q. And if it had been in the dresser drawer, or under some mattress, or something else, you wouldn't know anything about that, would you?

A. No, sir.

Q. Will you examine that People's Exhibit 1 marked for identification and tell the jury whether there is anything

unusual about that gun, that is, either as to color or size?

A. Well, it is a .38 police positive of Spanish make. Outside of the markings we placed on it, there is nothing else peculiar about it.

Q. There are a lot of black guns like that, aren't there; that is, in appearance?

A. There are a lot of black guns, but there are very few Spanish make guns of that type.

Q. What is the difference between the Spanish guns and the rest of these black ones?

A. Well, in appearance, I don't suppose there is too much difference.

Q. Did you see any jewelry there?

A. Just the jewelry that Hutchison had found.

Q. You saw some jewelry that Hutchison showed you later?

A. Yes, sir.

[fol. 170] Q. I mean, you didn't see that after you went into the room, did you?

A. No, sir. I had my hands full watching Morgan.

Q. Do you recall what pieces of jewelry Sergeant Hutchison showed you?

A. Yes. There were two rings and a watch.

Q. And at that time you didn't know who that jewelry belonged to, did you, at the time he showed it to you?

A. No, sir.

Q. Was it later identified by Mr. Barr as his jewelry?

A. Yes. The ring and watch was identified as his.

Q. What did he do in making this identification to you, if anything?

A. I don't know how he identified it. He identified it as being his jewelry.

Q. He just said it was his jewelry, is that right?

A. Yes, sir. The watch, he has the numbers of.

Q. That's all you recall that he did?

A. Yes, sir.

Q. So after you arrested Morgan, that is, you had him under arrest, where did you take him?

A. We went back to the Wabash Avenue Station and picked up Anderson.

Q. Picked up Anderson; and then you took both of them [fol. 171] to 11th Street?

A. Yes, sir.

Q. When you got to 11th Street, who did you see there,—I guess Officer Hutchison was there—who might be interested in this case?

A. Mr. Barr was called there.

Q. What time did Mr. Barr come down there, do you know? You don't have to be exact.

A. I'd say about nine o'clock.

Q. And at that time, isn't it a fact that he said that Anderson was the man that tied him?

A. I never heard him say that.

Q. You never heard him say that?

A. No, sir.

Q. At the time that he came there, Anderson and Morgan were together, weren't they?

A. Yes, sir. And there were some other colored police officers from the Bureau there, and some white police officers.

Q. At any time, Officer Piotter, during these identifications that you were having Mr. Barr make, did you have any of these defendants in line with any other persons so that they might be picked out?

A. Yes, they were all standing in with all these colored policemen.

Q. They got in with the policemen?

[fol. 172] A. Yes, sir, they were all standing in a group.

Q. So then, if they wanted to make an identification, they would reach over and say, "This is the one"?

A. No. He'd have to pick him out of the group.

Q. But you never had a line of men standing up?

A. No, we didn't have him in a show-up or a line-up of any kind; just the group.

Q. No show-up?

A. No, sir.

Q. How long did you stay at the Bureau that evening?

A. Oh, a little after midnight.

Q. Then, I presume, you went to Oak Park.

A. Yes, sir.

Q. You took the prisoners with you?

A. Yes, sir.

Q. Now, you arrived in Oak Park. What did you do with him?

A. We took a statement from Anderson.

Q. That's first?

A. Yes, sir.

Q. During the taking of this statement, where was Morgan, if you know?

A. He wasn't locked up. He was no doubt handcuffed. I believe he was handcuffed to a chair in the sergeant's office.

Q. Handcuffed to a chair in the sergeant's office?

A. Yes, sir.

[fol. 173] Q. How far is this place where you were taking the statement, approximately, from the place where Morgan was handcuffed to this chair in the Sergeant's office?

A. About twenty-five feet. You just go out of one door and down a few stairs into the sergeant's office.

Q. If anybody was hollering or yelling you could hear him from the place where the statement was being taken up to the other place, couldn't you?

A. Yes, sir.

Q. Did you hear anyone yelling or hollering prior to the taking of the statement or during it?

A. At no time.

Q. How long did it take you to take this statement from Anderson?

A. Oh, an hour, an hour and one-half.

Q. Who was asking the questions?

A. Sergeant Hutchison.

Q. Was it a written statement?

A. Typed.

Q. Who was doing the typing?

A. He also typed it. He typed it and then asked the question.

Q. Who else was present?

A. I don't recall, outside of Sergeant Hutchison and myself, when Anderson's was taken.

Q. Was Officer Witte around?

[fol. 174] A. Yes, sir, Officer Witte was there. He was working in the station.

Q. And then, after you finished with Anderson's statement, what did you do, if anything, in regard to Morgan?

A. Took a statement from Morgan.

Q. And was that immediately after you had finished with Anderson?

A. Yes, sir.

Q. What time did you end the statement with Morgan? What time did you finish taking it?

A. Round two, two-thirty.

Q. Two-thirty in the morning?

A. Yes, sir.

Q. Then what did you do after you finished the statement?

A. That was about four-thirty in the morning that he finished his statement.

Q. What did you do with Morgan after four-thirty?

A. After four-thirty, he was locked up.

Q. Either prior to the taking of this statement or subsequent to the taking of this statement, did you at any time take Morgan down into the basement and tie him up and pull him up to the ceiling?

A. No, sir.

Q. And strike him in the stomach at the time?

[fol. 175] A. No, sir.

Q. And did anybody do that in your presence?

A. No, sir, they didn't.

Q. If anyone had done that and you were upstairs, you wouldn't have known a thing about it, would you?

A. If he was in the basement?

Q. Yes, if he was in the basement and you were upstairs.

A. If he had made any noise at all, I would.

Q. You would hear it, if he had made any noise?

A. Yes, sir.

Q. And at the time that you started taking Morgan's statement, did you offer him any inducement at all to make the statement?

A. No, sir.

Q. What did you say to him, Officer Piotter, when you got ready to make the statement?

A. We asked him if he cared to make a statement. He says, "Yes," he would. We told him that he had his rights as to an attorney, and anything that he might say in that statement would be used against him in a court of law.

Q. Who warned him?

A. Officer Hutchison, any time he starts to make a statement.

[fol. 176] Q. You heard Officer Hutchison warn him as to his constitutional rights?

A. Yes, sir.

Q. And he told him that he could have a lawyer?

A. Yes, sir.

Q. Do you know what he said?

A. He said he was perfectly willing to make a statement.

Q. He said he didn't want a lawyer?

A. I don't recall if he did or not.

Q. Now, how long did Morgan remain in the lock-up on the morning of June 6th, after the taking of this statement?

A. Until—well, we went out and picked up Jennings then.

Q. No. I want to know how long Morgan stayed down in this lock-up, if you know.

A. Until we brought Jennings back.

Q. Until you brought Jennings back?

A. Yes, sir.

Q. What time was that, sir?

A. Oh, seven, eight o'clock in the morning.

Q. By the way, how long had you known that you were looking for Morgan prior to the time that you arrested him in the Evans Hotel?

A. I can't hear you.

[fol. 177] Q. How long had you known that you were looking for Morgan, that is, known him by his name, or by any other name, prior to the time that you arrested him at the Evans Hotel?

A. How long? About the 29th we knew his name was Blackie.

Q. You knew his name was Blackie?

A. Yes, sir, Blackie or Buddy.

Q. Did you obtain a warrant for his arrest at that time, when you found out that his name was Blackie?

A. Yes, we got a John Doe warrant.

Q. Did you obtain a warrant for a person by the name of Blackie?

Mr. Brown: He says he had a John Doe warrant.

Mr. Geter: A John Doe warrant is different. You know it is, too.

Mr. Brown: I know of no such thing, your Honor.

Mr. Geter: You better find out.

Mr. Brown: Do you want me to stay here another twenty years to find out, counsel?

Mr. Geter: No. I think, if you search your memory, you would probably know.

Mr. Brown: After twenty years, I know all about it. I know enough.

[fol. 178] Mr. Geter:

Q. Mr. Piotter, did you have a warrant naming one Blackie?

A. No, sir.

Q. Did you have a warrant to search any premises at 6101 Evans Avenue?

A. No, sir, we didn't.

Q. By the way, where did you arrest Jennings?

A. 5303 Dearborn.

Q. That's in Chicago?

A. In Chicago; the second floor.

Q. What date and what time did you go there?

A. Six o'clock in the morning; five-thirty, six o'clock on the 6th of June.

Q. How's that?

A. The 6th of June.

Q. About six o'clock in the morning; five-thirty, six o'clock in the morning?

A. Yes, sir.

Q. How long had you known about Jennings? How long had you known Jennings' name prior to the time that you were there?

A. We didn't know anything about Jennings outside of the fact that he was called Blackie, also.

Q. Outside of what?

A. Outside of the fact that he was also called Blackie.

Q. Oh. They all were called Blackie, is that right?

A. It seems that way.

[fol. 179] Q. But you didn't have a warrant for his arrest, either, did you, when you went out there?

A. No, sir. We had one John Doe warrant.

Q. You had no warrant to search the premises there, did you?

A. No, sir, we didn't search the premises then.

Q. But you had no warrant. If you had searched, you didn't have a warrant?

Mr. Brown: Object to the speculation, your Honor.

The Court: The objection is sustained.

Mr. Geter:

Q. Now, you went there. How did you gain admission to the premises?

A. Knocked on the front door.

Q. What happened?

A. The lady opened the door and let us in.

Q. Then, when she opened this door, did she invite you to come in?

A. Yes, sir.

Q. What did she say to you?

A. We told her we were police officers and we were looking for a fellow by the name of Blackie, and she let us upstairs, invited us in.

Q. You told her you were police officers. I didn't quite hear you.

A. She invited us in.

[fol. 180] Q. Invited you in?

A. Yes, sir.

Q. And you went to the second floor?

A. Yes, sir.

Q. And when you got up there, what did you see when you first got up there?

A. A couple of women there. One was in bed. I went to the back part of the house and saw a light in a room. At the time I didn't know what room it was. I opened the door and I found it to be a bath room, and Jennings was in there.

Q. Did you know Jennings when you opened the door?

A. By the description that we had of him, I was reasonably sure that was the man.

Q. And what was Jennings doing, if anything?

A. He was trying to dress hurriedly.

Q. Trying to dress?

A. Hurriedly, yes.

Q. Why hurriedly?

A. Well, he later told me that if he could have got dressed, he would have jumped out of the window.

Q. So he knew you were in the flat, is that right?

A. Yes, sir, I imagine.

Q. Could he see through the door, or something? The door to the bath room was closed, wasn't it?

A. The door was closed, yes, sir.

Q. And he told you that if he could have gotten his clothes [fol. 181] on in a hurry, he would have jumped out of the window?

A. Yes, sir.

Q. And when did that conversation take place?

A. In the bath room.

Q. Oh, this is all in the bath room?

A. Yes, sir.

Q. That's all he said to you in the bath room?

A. That's right.

Q. He didn't ask you who you were, or anything?

A. I told him "police officer." I told him to come out. I said, "If there's anybody in there, come out. Police officer."

Q. Then did you handcuff Jennings?

A. I don't believe we did in the flat.

Q. What did you do, after he got on whatever he got on to come out? What did you do with him after that?

A. Put him in the squad car.

Q. Did you stop anywhere in the room?

A. We stopped while he finished dressing, yes.

Q. Did you notice anyone push or shove anybody other than Jennings in the room?

A. No, sir.

Q. Did you notice anybody going through the dresser drawers and upsetting the room generally?

[fol. 182] A. No. The police officers were looking around. I had Jennings and I didn't have time to look.

Q. When you said "looking around," was he just walking around glancing here and there?

A. I didn't pay any attention to what they were doing.

Q. Everything else was quiet and peaceful in this apartment, isn't that right?

A. Yes, sir.

Q. And at no time did you hear any commotion of any kind?

A. No; just the women wanting to know what we were arresting him for.

Q. Did you see anybody take any rings off of a lady's hand in there?

A. No, sir.

Q. Did you see anybody take a watch away from a lady?

A. No, sir.

Q. By the way, how many officers were with you at the time you went in there?

A. Lieutenant Nester, Sergeant Thor; and we had a couple of police officers from the Wabash Avenue Station.

Q. There were five of you, is that right? Four of you, without yourself?

A. There could have been five. But the Chicago men were supposed to be around the building.

Q. Do you have any recollection as to what any of the [fol. 183] rest of these officers were doing in your presence?

A. I couldn't watch them all. I had my hands full after I got Jennings to watch him.

Q. Then you came downstairs and put Jennings in the squad car. Where did you take him to?

A. Took him to 11th and State, the Bureau.

Q. How long did you stay down there?

A. Oh, just long enough for them to run him through the Bureau. About an hour.

Q. About an hour?

A. Yes, sir.

Q. Do they run them through faster in the morning than they do in the evening, or what?

A. They do, if they are busy, yes.

Q. Then you proceeded to go to Oak Park, is that right?

A. Yes, sir.

Q. You arrived out there about what time?

A. Around eight o'clock.

Q. Then where did you take Jennings at the time that you took him to Oak Park; whereabouts in the station?

A. The lieutenant's office.

Q. And did someone start talking to him?

A. Yes. Lieutenant Nester brought up Morgan.

Q. Well, he had Morgan brought up, is that right, or did he bring him?

A. He had him brought up. And we called Mr. Barr to [fol. 184] come in.

Q. You called Mr. Barr, also?

A. Yes.

Q. And when Mr. Barr got there, he looked the fellows over, is that right?

A. Yes, sir. He identified Jennings at that time.

Q. As a matter of fact, when Jennings walked from you, he says, "I can tell that men from the rear." Did he say that?

A. No. He just says, "That's the man who was in my store."

Q. He says, "That's the man, that's the other man," is that right?

A. As I recall, he says, "That's the man that was in my store" or "One of the men who came in my store."

Q. Then what transpired after Mr. Barr made his identification now?

A. Jennings was shown a statement of Morgan's. He read it over and made a correction in it.

Q. He sat down and read the statement or did he stand up, or what?

A. The statement was read to him, and then he objected about some jewelry that he had gotten.

Q. He didn't read it, it was read to him. Who read it to him?

A. Lieutenant Nester.

[fol. 185] Q. And everything was all right except about one little thing in there?

A. He objected to that, and so the lieutenant wrote in an objection as to what he got, and he initialed it and signed it.

Q. He put his initial on it?

A. No, he signed it. He signed his name.

Q. No, you have both signatures on this statement, isn't that correct?

A. He also signed the statement, yes, sir.

Q. Was Morgan there while all this was going on? Morgan was there while all this was going on, is that correct, sir?

A. Yes, sir.

Q. I believe you testified on direct examination that they got some jewelry from Jennings at 5306. Did you see any jewelry there?

A. He was wearing a ring.

Q. He was wearing a ring?

A. That's right.

Q. Did you get a watch from him?

A. No, sir.

Q. Have you recalled all the time now that they said they got some jewelry from Jennings? You have known that all the time, haven't you?

A. As I recall, they got a ring from Jennings.

[fol. 186] Q. Mr. Piotter, without looking at those tags, because I think they specifically state where all this business came from, would you pick out the ring that came from Jennings, without looking at the tag, sir?

A. This one (handing item to counsel).

Q. This is it?

A. I believe so. I don't want to get too close to it.

Q. And where is the jewelry you got from——

Mr. Brown: (Interrupting) May we have the record show what he has picked out, Mr. Geter?

Mr. Geter: He says he believes this is the ring.

Mr. Brown: May we have the number?

Mr. Geter: Yes. He has picked out People's Exhibit 8.

Mr. Brown: May the record show that that has been identified as the ring taken from Jennings' room previously, your Honor?

Mr. Geter:

Q. Now, Mr. Piotter, was this ring identified by Mr. Barr as his property?

A. Yes, sir.

Q. When was that?

A. I don't recall when it was.

Q. What kind of identification did he make of it?

A. I don't remember how he identified it.

[fol. 187] Q. Well, you know he said it was his ring, don't you?

A. I know it was identified, but I don't know just at what time or how he identified it.

Q. Did you show him the ring for the purpose of identification?

A. No, I didn't.

Q. You were present when it was shown to him, though?

A. No, I don't recall being present when it was shown to him.

Q. How do you know he identified it?

A. Well, I was told that it was the ring identified by Barr.

Q. All right. You said there was a ring, I believe, that Smith was wearing?

A. Yes, sir.

Q. Would you pick that ring out, if you can?

A. Yes, sir, (handing item to counsel).

Mr. Geter: This is People's Exhibit 9.

Q. Do you know, of your own knowledge, whether or not Mr. Barr ever identified this as his ring?

A. No, I don't, not of my own knowledge.

Mr. Brown: Do you mind reading the number of that again, Mr. Geter? You said nine.

Mr. Geter: Oh, I read the wrong number. It is Item 9. It is People's Exhibit No. 6.

[fol. 188] Mr. Brown: And that has been identified as the ring taken from Smith.

Mr. Geter: Let's get this other one straight there, too. This other one is People's Exhibit 8. I was reading the blue mark on there instead of the black mark.

Mr. Brown: You read the other one right, This one, you said, was nine and this one was six. I thought you were reading it upside down.

Mr. Geter: No, I didn't read it upside down.

Mr. Brown: O.K.

Mr. Geter:

Q. Do you know, of your own knowledge, whether or not Mr. Barr ever identified this as his ring?

A. No, sir.

The Court: Is that all, Mr. Geter?

Mr. Geter: Not all of the cross examination. Just on this jewelry.

The Court: We will take a short recess at this time.

(A short recess was had.)

The Court: Bring in the jury.

Mr. Geter: May I proceed?

The Court: Proceed.

Mr. Geter:

Q. Officer Piotter, did you have an occasion to go to [fol. 189] Lake and Western in making your investigation in this matter?

A. Lake and Western?

Q. Yes; the restaurant.

A. We drove by there, that's all.

Q. You never stopped in at a restaurant there?

A. No, sir.

Q. Now, you made this trip to Cleveland with Morgan, is that right, on June 7th?

A. Yes; Monday morning.

Q. At the time that he left to go to Cleveland, he was in custody of the police, is that right?

A. Yes, sir.

Q. And when you took him to the F. B. I. office, he was still in the custody of the police?

A. Yes, sir.

Q. And he remained in the custody of the police throughout the trip, is that right?

A. Yes, sir.

Q. Mr. Barr was with you on that trip?

A. Yes, sir.

Q. Were you present with him at any time when he identified any of his jewelry?

A. No, sir. I was in the Cleveland police station.

Q. You never saw him identify any jewelry in Cleveland?

A. No, sir.

[fol. 190] Mr. Geter: That's all.

Mr. Brown: That's all.

The Court: Step down.

(Witness excused.)

[fol. 191] Reporter's Certificate to foregoing omitted in printing.

[fol. 192] SUPPLEMENTARY EXHIBIT #1

IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

PROCEEDINGS ON MOTION TO SUPPRESS EVIDENCE

Excerpt from proceedings had in the above entitled cause on Friday, August 13, 1948, before the Honorable Alan E. Ashcraft, Jr., sitting as a Judge in the Criminal Court of Cook County, the same being one of the judicial days of the August, 1948, term of said court.

Present: Hon. Wm. J. Tuohy, State's Attorney, By Mr. James A. Brown, Assistant State's Attorney, Attorney for the People; Mr. H. D. Geter, Attorney for petitioners.

[fol. 193] The Court: The issue here is, some time after a crime was committed—and you are able to show a crime was committed—the police officers had a car; they found one of the owners of the car, and he implicated the other owner, his co-partner. He said his co-partner, who is one of the petitioners here, had the car on that date. They apprehended that man, and through him obtained information about others. The question is whether the police officers, told that a certain person is implicated in a crime—whether they have a right, on that information alone, information from an accomplice, to go to a man's home, arrest him and search his premises. I think that is the issue.

As far as Smith is concerned, it would appear they had justifiable evidence. As to the others—have you a case on that?

Mr. Brown: I don't have it at my finger tips but I will be glad to produce it. Why don't we put this over until Monday for the argument on the law? I will be glad to bring in some law at that time.

[fol. 194] Mr. Geter: That last statement the Court made, I don't think it is very clear, as to the arrest of Smith, because at the time Smith was arrested they didn't have any information other than the fact——

The Court: (Interrupting) But he was the co-owner of the car that was used in the robbery. That would be some ground for suspicion. I think that would almost be reasonable ground.

Mr. Geter: To the State it might have been.

Mr. Brown: Assume he told the police that men were implicated in that robbery with him, and the police could not get a warrant for the next twelve hours.

Mr. Geter: This is ten days.

Mr. Brown: Pardon me. This was six o'clock at night, say, and they did not go out until the next day at eleven o'clock, then they found they had gone to Cleveland. Would that be reasonable grounds for every paper in Chicago condemning the police department for not making an arrest when they were told by a co-defendant that he was implicated in the robbery?

The Court: The issue here is not whether the police [fol. 195] might have been justified because of the publicity in doing certain things. It is a question of how that pro-

cedure would be justified. It would appear to me that the police in this case did some very fine work, but we still have the constitutional provision——

Mr. Brown: There is not any question about the law.

The Court: I won't be here Monday.

Mr. Brown: Put it on for tomorrow morning, then, Judge.

Mr. Geter: Judge, I can't be here tomorrow. I have some other cases here, too. In this case, as I say, I think the issue is pretty clear.

The Court: Is this case set for trial?

Mr. Geter: No, it has not been set yet.

Mr. Brown: Not only that, your Honor, but the police want a late date. They are still investigating that Cleveland angle in this matter.

Mr. Geter: I don't care about what angle they are working on.

The Court: What about Monday, August 23rd? Will you be here then?

Mr. Geter: That is all right with me.

The Court: Make it Thursday, August 26th. If you [fol. 196] have any cases you want to submit to me between now and then, I will rule on it on August 26th.

Mr. Geter: I have some I would like to submit.

Mr. Brown: It is understood, your Honor, that the State has not rested in this matter. There is an argument now to dismiss it at the end of the petitioners' proof.

The Court: That is right.

Mr. Geter: I would like to submit this to you now, Judge. Some of those citations are in Cahill, because it was taken from an old brief of mine, but nevertheless you will find the provisions are still the same.

The Court: August 26th.

Whereupon the further hearing of this cause was continued to Thursday, August 26, 1948.

[fol. 197] Reporter's Certificate to foregoing paper omitted in printing.

[fol. 198] SUPPLEMENTARY EXHIBIT #1 (PART TWO)

[Title omitted]

Before: Judge Ashcraft, Monday, October 4, 1948, At ten o'clock a. m.

Court met pursuant to adjournment.

Present: Mr. Edward Healy, Mr. James A. Brown, Assistant State's Attorneys.

Mr. H. D. Geter, On behalf of Arthur Smith, Talbot Jennings and Edgar Donald Morgan.

Whereupon the following proceedings were had:

The Court: Are you ready Mr. Brown?

Mr. Brown: As I recall, I have been away, but, as I remember this it was a motion to suppress which was more [fol. 199] or less argued and some citations were submitted to the Court. I will rest on that.

The Court: Are you ready to proceed to trial after that? After the decision on that?

Mr. Brown: I haven't checked on that. I just came in.

Mr. Geter: My understanding was we were to be ready for trial today, because it was quite a long continuance.

Mr. Brown: It is entirely possible.

The Court: It was my understanding.

Mr. Brown: It is on with subpoenas. I just have not checked to see if the witnesses are here. If the witnesses are here, we are ready, of course.

The Court: The defendants may sit down. The attorneys may step up.

As I remember the facts, I made a few notes in this case. In May '48 a jewelry store in Oak Park was invaded by two men, at gun point, and a quantity of jewelry was removed. That is what the evidence was on it, the two holdup men arrived in a taxicab driven by a third man. The officers were *and* Hutchinson and Pioter of the Oak Park Police. The only clew was the description of the cab. [fol. 200] On May 28th they arrested the defendant Arthur Smith, jr. who admitted part ownership of the cab. Smith also admitted that he was the man that drove the car on the day in question. Smith, at the time of his arrest was wearing a ring which was identified as part of the loot, taken in the store. Smith told police he did not know the two men who were in his cab on the day of the robbery and described them, however he said that one called the

other Blackie or Buddie, I think that was it. Smith also informed the police the location where he picked up and discharged two passengers. Smith received from the two men ten dollars, bottle of whiskey and a promise to take care of him later. Police officers in their investigation, two days later learned that one Fred Anderson, an ex-convict knew a man named Blackie who fitted the description of the man given by Smith. On June 5th the police located Anderson and asked him about Blackie. Anderson told the police that he knew why they wanted Blackie, and that he, Anderson had nothing to do with it, but that, I think he told them that Blackie's name was Edward Morgan, and that he at that time was in Anderson's room at the hotel at 733 East 61st Street. Anderson gave the two police- [fol. 201]. men the key to his room and advised them his rent was paid only to six o'clock that evening and that Morgan was planning to go to Cleveland the same night. Anderson also warned the police that Morgan was armed and dangerous.

The two police officers from Oak Park and two Chicago policemen immediately went to the hotel without obtaining a warrant. I think there was some evidence that they had a forthwith warrant.

Mr. Brown: That is in evidence.

The Court: Which is in evidence. Of course it is a well known fact that many policemen arm themselves with forthwith warrants anyway, to use when occasion arises, and the court takes that into consideration.

Mr. Brown: This was signed by the complaining witness, the complaint was introduced also.

The Court: That may have something to do with it, but there is no evidence they used the warrant when they entered the place. That they showed the warrant to anyone.

Mr. Brown: They don't have to.

The Court: Anderson gave the police his key to his room and they used the key and without knocking, they unlocked [fol. 202] the door with Anderson's key and entered. It was room 412. The police found Morgan and an acquaintance Alice Richards in bed, under clothing and Evelyn Freeman a friend was in the room.

It was uncontroverted the officers seized and removed watch, ring and wallet from the top of the dresser in the room. These articles were in plain sight when the police

entered. Morgan and the Richards girl testified that the officer made a thoro search of the room and discovered a loaded revolver in a dresser drawer. Officers Hutchinson and Pioter, who were called as witnesses by the petitioner, Morgan, testified that the revolver was not concealed in the drawer but was also in plain sight on top of the dresser. The court finds, as a matter of fact, that the revolver in question was at the time of Morgan's arrest on top of the dresser in plain view of the officers.

(Here follows discussion on citations presented.)

The only remaining question is whether the officers had reasonable grounds to believe that the petitioner was in- [fol. 203] volved in the commission of a crime which belief is sufficient to justify an arrest. Until a few minutes before the arrest, the officers knew only that one of the supposed participants in the holdup had been called Blackie or Buddie, and they were told that his name was Morgan, and where he could be found. They were also informed that he planned within a matter of minutes to leave such place and also to leave the city and State as well. Under such circumstances the police officers properly proceeded directly to the Evans Hotel without pausing to obtain a warrant for petitioner's arrest and so proceeding they acted as reasonable, prudent men would act under similar conditions. They knew that a crime had been committed and through intelligent police work, they had reasonable grounds to suspect that the petitioner was connected in some way with the crime. That petitioner may or may not be guilty is of no moment, in connection with the inquiry. The test is whether the officers had reasonable grounds to suspect him.

The Court finds that the arrest is lawful and that the articles which petitioner seeks to have suppressed, were in plain view of the arresting officers and were properly [fol. 204] seized by such officers. The petition is denied.

Mr. Brown: Are the officers here in this Smith, Jennings and Morgan case? Officer Hutchinson, Officer Pioter, and Sidney L. Barr.

The Court: We will hold this case.

Mr. Brown: I assume that they must have felt that the decision was merely to be on the call today. Nobody is here.

The Court: We will pass it until you have an opportunity of checking.

Mr. Brown: I wonder if subpoenas were issued.

The Court: It will take some time to pick a jury. It is a jury case anyway.

Mr. Geter: Yes.

The Court: We will pass it for the time being.

(Whereupon said cause was continued and passed temporarily, and again called later in the morning, and the following proceedings occurred.)

Mr. Brown: The complaining witness is of the Jewish faith and he is high up in the Synagogue there and is partaking of some of the ceremonies today.

[fol. 205] The Court: He won't be able to get in today? Is he available? We could start picking a jury today.

Mr. Geter: If it has to go over, I won't be available before the 18th.

Mr. Brown: The case with Mr. Bellows is on tomorrow. I just heard Chester say shortly before you came on the bench, that Mr. Bellows was ready in that.

The Bailiff: That is what he said, when he was here last week.

The Officer: That would be satisfactory to us to put it over to the 18th.

Mr. Geter: I don't want to agree to a continuance but I was going to see, if we are going to have to go over——

The Court: The Khamis case is supposed to go to trial on the 18th and if it does, it will take the whole week. How about the fourth term?

Mr. Brown: It won't be effective, as long as it was defendant's motion to quash, that stopped the other.

The Court: Monday, November 1st is open, and we can put it on for the first week of the jury or we can start picking a jury today.

[fol. 206] Mr. Geter: November 2nd is election day.

The Court: November 4th, or start picking a jury today.

Mr. Brown: I would rather have my complaining witness here before I say I am ready. He is the one in the synagogue today and is officiating. 1247 is the case. Unless counsel wants to plead guilty this morning, and get it over with.

The Court: November 4th.

Mr. Geter: Motion of the People.

The Court: Or you have it by agreement, they have answered ready.

Mr. Brown: If it is going to be a long continuance to the next term it ought to be by agreement.

The Court: I have no other date until November, I have two or three jury cases set for every day. Motion State.

Mr. Brown: All right; either way.

Which were all the proceedings had on said date in said cause, and same was set for hearing for November 4, 1948.

[fol. 207] Reporter's Certificate to foregoing omitted in printing.

[fol. 208] [Title omitted]

November 4th, 1948.

Mr. James A. Brown, For the People

Mr. Howard Geter, For the Defendant

Mr. Brown: Are your defendants in jail?

Mr. Geter: Yes.

Mr. Brown: In this matter the State is asking for a continuance. We are not quite ready. We have out of town witnesses that are necessary to this case. I would like a continuance until a reasonable time consistent with your call.

Mr. Geter: I am going to object to that. I do not think there has been a proper showing. This case has been ready for quite some time. These men have been in jail since May, I believe. The last time it came up we were ready and the State had it set for today, November 4th. There was some [fol. 209] talk about November 3rd. I do not doubt what he says is true but I think he should set it up in the form of an affidavit and tell us what these people would testify to. We are entitled to that consideration, not just coming in on a date like this and stating they are out of town.

Mr. Brown: There are two more cases set at the top of the call. I assumed they were going ahead. To be perfectly frank about it, I didn't think we were going ahead at all. We need another continuance. We expected to go ahead with the Szaraczynski case and the Davis case. They were on yesterday and held over until today. I was positive they would go ahead.

Mr. Geter: I understood this was at the head of the call.

Mr. Brown: The others were set for yesterday.

The Court: They were set for yesterday and they were held on for today.

Mr. Brown: I find now we will need a little extra time.

The Court: How about December 6th?

Mr. Geter: Of course I object to that. I object to any kind of continuance.

[fol. 210] The Court: The record will show the defendants are demanding trial. That is an open date. I think.

Mr. Brown: I wonder if you can give us one week after that.

The Court: Well, how about the 13th?

Mr. Brown: That would be better.

The Court: Motion of the State December 13th.

Mr. Geter: December 13th?

The Court: Yes.

Mr. Brown: Motion of the state, so your rights are protected.

The Court: Yes.

(Whereupon the further hearing of the above entitled matter was continued to December 13th, 1948.)

[fol. 211] Reporter's Certificate to foregoing omitted in printing.

[fol. 212] [Title omitted]

TRANSCRIPT OF PROCEEDINGS BEFORE JUDGE ALAN ASHCRAFT, JR. ON 12/13/1948

Present: Mr. John S. Boyle, State's Attorney, By Mr. Blair Varnes and Mr. James Brown, for the people; Mr. Howard D. Geter for the defendants.

[fol. 213] The Court: Today is the day you to go trial, the four-term runs today.

Mr. Brown: Your Honor, the Motion to Suppress was not entirely decided until October 4th.

The Court: Is that correct?

Mr. Brown: October 4th, here, Petition to Suppress denied, see it there?

The Court: That takes care of it.

Mr. Geter: I am going to say this, though, Judge on that record No. 1, the first order on there is not correct. It also shows that there was a motion of the defendant for a hearing. Now, that first order, that is when we came up from down at the arraignment. Certainly I did not ask that that matter be continued because they knew the State was not ready, and I was as ready then as I am now.

I would like to correct that and I am going to make a motion at this time to discharge the defendant because even though there was a Motion to Suppress made that the fourth month ruling should prevail anyway.

Mr. Brown: The Supreme Court they said differently, the four-term is stopped on any motions of the defendant.

The Court: Petition filed by defendant, by agreement continued to August 13th. That was continued to August [fol. 214] 13th. On August 13th, petition filed by defendant Smith and Jennings to suppress evidence, heard in part, and continued to August 26th. We had a hearing on the 26th on the motion; order of Court the Motion to Suppress as to Smith and Jennings, denied. Motion to suppress as to Morgan held. Order of Court: Ruling continued generally, order of Court on the——

Mr. Varnes: That was Saturday, October 4th.

The Court: Was that by order of Court?

Mr. Varnes: It was still the motion, your Honor, their motion you decided on two of them, you were sure on two, and you——

The Court: As to two of them, it is the 26th.

Mr. Varnes: It is still their motion, the case could not be decided if you were not entirely finished, because there were three petitions.

The Court: You want the Court to keep on continuing the matter?.

Mr. Geter: I say not.

Mr. Brown: Any reasonable time——

The Court: What is a reasonable time—just keep on continuing the Motion to Suppress and keep a person in jail indefinitely without trial. I do not think any Court would [fol. 215] hold that.

Mr. Varnes: It was their motion, certainly we didn't stop the case. If you remember, all through their arguments I asked that we hold this till the trial, and they wanter their motion heard before the trial started.

Mr. Geter: That is the law, the only time you could hear it.

Mr. Brown: Oh, no, you can hear it any time, so long as it is filed in apt time. Then the Court can hear it at the time the evidence is about to be presented, if he wishes to.

Mr. Geter: We did nothing to stop the Court from ruling on it.

The Court: I remember I took it under advisement, I thought that was by agreement, but the record does not show it.

Mr. Brown: The first time you can set it then is after August 26th, your Honor, was October 4th, so that is the first date on which we could have gone to trial.

The Court: Motion to Suppress denied as to some of them, and trial set for October 4th.

Mr. Brown: That is right. It does not name what happened as to Morgan on August 26th.

[fol. 216] The Court: We had to dispose of the other matter first, and then it seemed that it would be four months after that.

Mr. Geter: As you say, I do not believe the Court—of course, there was no reason, the defendants had rested their evidence long before the Court ruled on this, and as you said, I do not believe a Court could continue even on the Court's own motion and keep a man in jail, these fellows have been in jail since May 28th, that is when one of them was originally arrested, and you certainly overruled the motion, you said, on the 26th as to somebody, Smith and Jennings.

Mr. Varnes: And at that time the case was set for October 4th. That was the first time it could be set, you are practically at the First of September, then you can't expect the Court to put you way in front of everybody.

The Court: The present four-term starts on the 13th or the 26th, we heard part of the evidence on the 13th on the Motion to Suppress, and heard part of the evidence on the 26th.

Mr. Brown: That is right.

The Court: I believe the time started on the 26th, so today is not the last day, you have till the 26th.

[fol. 217] Mr. Brown: Judge, we couldn't start the trial on the 26th when the motion as to Morgan was still pending, and you could still say it was pending as to Morgan on the 26th.

The Court: As to Morgan you may be right.

Mr. Brown: This is the same question as to all of them.

Mr. Geter: So what? That does not make any difference.

The Court: That does not make any difference. It is Order of Court. The fact you had twenty cases waiting under the statute wouldn't make any difference, now, as I understand it. What about the continuance today, you want one when the jury start on the 20th, there will be a new jury on the 20th and we could set it for the 23d, you could still be picking the jury on the 23d and let it go over to the 27th. You won't need your witnesses here till the 27th, the 26th is the Sunday. How about the four-term act?

Mr. Brown: Sunday does not count.

Mr. Geter: Judge, I made preparations to go out of town.

Mr. Brown: I am going to suggest we start on the 23d [fol. 218] and I will start picking a jury that day, and we will try it on the 27th, it is my suggestion, and there won't be any question about it.

Mr. Geter: Judge, we have witnesses that have come here and they have been here twice from out of the city, and each time the State has, I don't know what the reason for the continuance—the last time the reason for the continuance was they just were not ready, and I objected.

The Court: What is your reason for continuance today?

Mr. Varnes: The reason for a continuance today, your Honor, is because we were not entirely sure where we stood as to the availability of the complaining witness, who had been in Cleveland in the Federal Court on this case on the 17th, the 16th, rather.

The Court: You probably wouldn't have been completed by that time anyway.

Mr. Varnes: I don't expect it would, and we probably need him in rebuttal, and we would be without him.

The Court: Doesn't one of your clients have to be in Cleveland?

Mr. Geter: I hope not. They took him a couple of times, I am his law-er, I don't know what happened, that is, what happened, I have not been able to see Morgan for a couple [fol. 219] or three weeks.

The Court: I think you will find they take him there.

Mr. Geter: If they are planning to take him any where, we are asking for a trial or that these defendants be discharged. I think we proved the rule enough in this case. In

the first place, I think No. 1, if I came in here to get a continuance, I would have to set up an affidavit asking why we wanted to continue the trial, on any kind of business in my situation, and I think the same thing applies to the State, just the mere fact the State comes in there under these circumstances, is supposed to have the right-of-way, the right of determination or something like that?

Mr. Brown: You could have been tried in July, but you stopped it with your motion to suppress.

Mr. Geter: I had a right to stop it if I wanted.

Mr. Brown: You did and have done it.

Mr. Geter: But I don't have the right——

The Court: You want it set the 27th or the 23d?

Mr. Brown: I would like to have it set for the 23d, your Honor.

The Court: All right.

Mr. Brown: The 23d, and we will pick a jury.

[fol. 220] Mr. Geter: From the 23d, now, just a minute, as I said, I have made preparation to go out of town on the 26th around Christmas, preparations, I am not due back here till the first. Of course, if we are, if the defendants don't have any rights, we are going to have to go to trial the 23d just because one of the witnesses might have to go to Cleveland or something like that, I don't think that is any good reason for continuing the case, the fact he might have to go to Cleveland on the 16th of December in some other case. This case to the defendants is just as important as that case in Cleveland, and it narrows up, I think we should—at least we are ready for it, and I think I am going to renew my motion, I would like the Court first to pass on my question of correcting that record, although the Court says it started—stopped when I made my motion to suppress, that first order was not on motion of the defendants, and I believe the Court, if he will refer to his notes, will find we come in here right upstairs from arraignment, we certainly wouldn't ask the matter be continued at all really to any particular date. I examined the record and I found that was what went on.

The Court: Then it was continued to August 13, but there [fol. 221] was evidence heard on the 13th, evidence heard on the 26th——

Mr. Geter: I am talking about the June order, Judge.

The Court: When it starts—it starts on the 26th.

Mr. Geter: It starts on the 26th then, wasn't August——

The Court: Now, counsel, he can't go to trial here today, the witness has to be in Cleveland, and the defendants has to be there, we can set it for the 23d or set it for the 27th by agreement, if you are going to be away during that week, we will have to have it be continued by agreement.

Mr. Geter: I will forego going away, I feel that is more important, but I will just go ahead and surrender my matter, make other arrangements, but I want to say this, I want to make a motion to discharge him, and I want a ruling of the Court at this time because we are ready for trial today.

The Court: You are convinced the four-term does not start today?

Mr. Brown: Yes, I am convinced.

The Court: All right, then we will continue it to December 23d for trial.

Mr. Geter: Could I have a ruling on my motion?

The Court: The motion is denied.

[fol. 222] Reporter's Certificate to foregoing omitted in printing.

[fol. 223] SUPPLEMENTARY EXHIBIT #1 (PART THREE)

[fol. 224] 48-1247

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

ARTHUR SMITH, ET AL.

July the 28th, 1948.

Before Judge Alan Ashcraft

The Court: We have a case on trial. Are you ready?

Mr. Geter: Yes, I am ready but I would like to file a motion to suppress. I served notice on the State's Attorney.

The Court: What about the State?

Mr. Brown: If he filed a motion to suppress, we will want some time. Will you put it down about two weeks for arguments on the motion to suppress?

Mr. Geter: I served a notice on the State.

Mr. Brown: As to Morgan?

Mr. Geter: Yes.

Mr. Brown: He represents Smith and Jennings.

Mr. Geter: I represent all three of them.

The Court: What about August 10th?

Mr. Geter: I have a case in Rockford, Illinois, on August 9th.

The Court: We could have just the motion that day.

[fol. 225] Mr. Brown: Do you represent all of them?

Mr. Geter: All three.

Mr. Brown: And you have a motion to suppress as to all three or just Morgan?

Mr. Geter: As to Morgan, because that is where the property was taken.

The Court: Do you have to bring in all the witnesses, anyway, on your motion?

Mr. Brown: It is his move—whatever witnesses he wants.

Mr. Geter: I say you will have to bring in the police officers so I can examine them.

Mr. Brown: If it is your motion, you want the police officers as your witnesses.

Mr. Geter: I say they got it illegally, under oath. It is up to you then to show you didn't get it illegally.

Mr. Brown: Oh, no. I will have the police officers here, though. Bring the police officers in on the 13th and we will argue the motion to suppress. But it is your petition. They are your witnesses, not the State's witnesses.

Mr. Geter: All right, I will put them on to testify they got it illegally.

[fol. 226] Mr. Brown: You allege certain things and you have to put it in issue. You don't just put something on a piece of paper and say it is up to me.

Mr. Geter: I will put it at issue.

The Court: All right, August 13th, motion to suppress only.

Mr. Brown: That is by agreement.

Mr. Geter: I would like to file the motion.

Mr. Brown: Without subpoenaes, but the police officers will be here.

Whereupon the further hearing of the above entitled matter was adjourned until August 13th, 1948.

[fol. 227] [Title omitted]

August 26th, 1948.

Before Judge Alan Ashcraft.

(Here follows a portion of the proceedings had on this date, as follows:)

The Court: Now let's get to Smith. I haven't made any ruling on Morgan as yet. Smith, as I understand, there wasn't very much testimony about his arrest, was there?

Mr. Geter: I think the officer testified that they arrested Marcus Williams, or something, and he told him he was a partner of Smith and that is how they happened to go to Smith's home.

Mr. Brown: They had a description of a cab.

The Court: Yes, I know. They got the owner of the cab and he said Smith was the co-owner and had it that day.

Mr. Brown: And he was arrested on the 28th of May, about one P. M., at 441 East 42nd Street. Of course, the evidence is further that Smith made a complete confession, implicating the other defendants.

[fol. 228] The Court. Jennings is the one that was in the bathroom.

Mr. Geter: Yes.

The Court: It was not his own home and Rosanna Watson let the police in. They brushed past her and picked up Jennings in the washroom and they tore up the house—what is that about a gun?

Mr. Geter: Asked her about a gun.

The Court: Demanded the gun. They took a watch from Rosanna but they gave it back to her. Then they went in and took rings from Evelyn Jackson right off her fingers. That's all they found when they arrested Jennings.

Mr. Geter: That is what they testified. Of course, Jennings said he had a ring that they took, too, but they denied they took any ring from Jennings.

The Court: Jennings testified he was arrested about five-thirty in the morning in the bathroom and they took a watch and ring from him and rings from Miss Jackson. They searched the dwelling there and they had nothing. As far as taking the rings from the Jackson girl, this was not the dwelling house of Jennings.

[fol. 229] Mr. Geter: He doesn't claim any interest in it and he had no interest in the rings.

The Court: As far as Jennings is concerned, there doesn't seem to be anything to suppress.

Mr. Geter: They took nothing from him, according to the police officer.

The Court: So that disposes of Jennings. Smith isn't making any claim. Smith said they wanted to talk to him about his car. They grabbed him and took him to Oak Park where he remained eight days. So evidently there is nothing, as far as Smith is concerned. So the only question at all is this question of Morgan.

Mr. Geter: That is why I filed a petition on his behalf at first, but when I talked to them, they told me about these other things and I filed petitions on behalf of all the defendants.

The Court: Do you have any further testimony you want to put in?

Mr. Brown: I haven't put any in.

The Court: Do you have any you wish to put in?

Mr. Brown: At this time?

The Court: Yes.

[fol. 230] Mr. Brown: If you recall, I said at the end of the petitioners' evidence I was making a motion to deny his petition and if at that time the Court overruled me, I would offer evidence, but I didn't want to offer any evidence on an exploratory matter.

The Court: As far as Smith and Jennings are concerned, your motion is sustained and their petitions are denied.

Mr. Geter: I would like for the Court to also find that there was no property taken from them. They contend there was some property taken and I wouldn't want to be caught in the position of having them offer some property on the trial.

The Court: It might be a question of property taken personally but there was nothing taken in any dwelling house.

Mr. Brown: In order to shorten this, I might ask the Court for leave to put the officer back on the stand for further cross-examination. Piott is the one he put on as his first witness.

Mr. Geter: I am objecting to that.

Mr. Brown: And he is the one who said he had a John

Doe warrant for Morgan. If that would change the Court's [fol. 231] opinion any, I will offer that warrant in evidence.

The Court: You would have to do that in your own case. What is the effect of a John Doe warrant?

Mr. Brown: That would take it entirely out of the realm of an arrest made without a warrant. I am arguing they had a right without a warrant at all.

The Court: The ruling is that the petitions of Smith and Jennings are denied. The motion of the State is sustained. At this time the motion of the State to dismiss the petition of Morgan is taken under consideration.

(Here followed further discussion between the Court and counsel, and testimony of witnesses.)

The Court: We better proceed with the case on trial. I will take this under advisement. Do you want an early date for trial?

Mr. Geter: I want to make a motion to reduce the bond.

The Court: What was the amount taken?

Mr. Brown: Approximately $12,000.00 taken in the robbery.

The Court: It doesn't seem like an unreasonable bond [fol. 232] for that large a robbery.

Mr. Geter: $10,000.00 is always unreasonable.

The Court: They probably can't even make $5,000.00.

Mr. Geter: I think $5,000.00 would be reasonable.

Mr. Brown: Any reduction would be over the objection of the State in the case of robbery with a gun of a jewelry store. On the motion also I ask the Court to take into consideration the previous records of these defendants for armed robbery.

The Court: I don't think it is excessive. October 4th.

Whereupon the further hearing of the above entitled cause was adjourned until October the 4th, 1948.

[fol. 233] Reporter's Certificate to foregoing omitted in printing.

[fol. 234] SUPPLEMENTARY EXHIBIT #2

[Title omitted]

Before Judge Ashcraft and a Jury

Indictment No. 48-1247

Thursday, January 6th, 1949, 10:00 o'clock A.M.

Court met pursuant to adjournment.

Present: Mr. Brown, Mr. Phillips, Mr. Geter.

(And thereupon the following proceedings were had in the presence and hearing of the jury, to-wit:)

JAMES HUGHES, a witness called on behalf of the defendant, Jennings, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Geter:

Q. What is your name, please?
A. James Hughes.
[fol. 235] Q. Where do you live, Mr. Hughes?
A. Detroit, Michigan.
Q. What is your address in Detroit, Michigan?
A. 1726 Saint Antoine Street.
Q. How long have you lived in Detroit, Michigan, sir?
A. Thirty-five years.
Q. And were you living in Detroit, Michigan, in May of 1948?
A. Yes, sir.
Q. And where were you living at that time?
A. 1726 Saint Antoine Street.
Q. Do you know a man by the name of Talbot Jennings?
A. I do.
Q. And how long have you known him?
A. I have known Talbot Jennings since May 22nd.
Q. May 22nd, 1948?

A. That's right.
Q. And do you see him in the courtroom?
A. Yes, I do.
Q. And that is?
A. The young man sitting right there (indicating).

The Court:

Q. You have known him since when?
[fol. 236] A. May 22nd.

Mr. Geter:

Q. How did you happen to talk with Jennings on May 22nd?
A. Talbert Jennings was sent to me by a cousin of his from Chicago.
Q. Why was he sent to you?

Mr. Brown: Object.
The Court: The objection is sustained.

Mr. Geter:

Q. Where did you first meet Talbert Jennings?
A. I went to the station to meet him. He called me by telephone.
Q. That was in Detroit?
A. In Detroit.
Q. Then, when you met him at the station, where did you go with him, if anywhere?
A. I brought him back to my home.
Q. Did he live there with you for a while?
A. He lived there with me for about ten days.
Q. Did he pay you any rent?
A. Yes, he did.
Q. As he paid you rent, did you give him rent receipts?
A. I did.

Mr. Geter: Mark these two rent receipts Defendant [fol. 237] Jennings' Exhibits 2 and 3.

(Said documents were marked Defendant Jennings' Exhibits 2 and 3, respectively, for identification.)

Mr. Geter:

Q. I show you, first, Defendant Jennings' Exhibit 2 marked for identification and ask you if you will examine that and if that bears your signature?

A. That's right.

Q. And I show you Defendant Jennings' Exhibit 3 and ask you if that bears your signature?

A. That's right.

Q. When did you affix your signature to these receipts?

A. The first receipt I affixed on the day he came there, and the second one was about two days before he left.

Q. Did you see Jennings on each day that he was there?

A. Yes. He was with me quite a bit. By him being a stranger there, I carried him around a bit and tried to intercede for him to get a job in a barber shop. I had a few friends that had a barber shop, and I carried him around quite a bit.

[fol. 238] Q. Were you successful in getting him a job?

A. No. The license in this state would not allow him to work until the change had been made over.

Q. Did you see Jennings in Detroit on May 24th?

A. Yes, I did.

Q. And on May 25th?

A. Yes, sir.

Q. Did you talk to him each day?

A. He was right with me every day.

Q. And, by the way, when did you come to Chicago?

A. I came to Chicago about Tuesday morning of the twenty-eighth, about three o'clock in the morning.

The Court:

Q. The twenty-eighth of what?

A. Of December.

Q. This last December?

A. Yes, sir.

Mr. Geter:

Q. And have you been here ever since?

A. I have been here since last Tuesday, three o'clock in the morning.

Mr. Geter: You may cross examine.

Cross-examination.

By Mr. Brown:

Q. What is your business?

Mr. Geter: Just one more question, Mr. Brown, please.

[fol. 239] Direct examination (Continued).

By Mr. Geter:

Q. What did you do with these receipts after you signed them, Mr. Hughes?

A. I give them to Talbert Jennings.

Q. Have you seen him since that time until the present time?

A. No, I haven't.

Mr. Geter: That's all.

Cross-examination.

By Mr. Brown:

Q. What is your business, sir?

A. I have a rooming house and a for rent barber shop. We rent chairs out by the week.

Q. What part of Detroit is that: 1726 Saint Antoine?

A. It's in what we call the loop.

Q. In the loop district?

A. That's right.

Q. How big a rooming house do you have?

A. Ten rooms.

Q. Is it in one building?

A. That's right.

Q. What kind of a building?

[fol. 240] A. It's a two story building. It has a club downstairs and rooms up over it.

Q. What kind of a club?

A. It's the Elcino Club.

Q. And what is that?

A. It's a club where there is entertainment and cabaret.

Q. Is that yours?

A. No, it isn't.

Q. And you have the premises about that?

A. Yes, sir.

Q. And in that premises you have ten rooms?
A. That's right.
Q. Was that originally a one flat?
A. No, it was four flats; but when the club moved downstairs, they taken part of the rear to make lavatories——

Q. (Interposing.) Just wait until we get the stack out. All right, go ahead.

A. The club that moved downstairs taken part of the rear of the building to make lavatories, so they made it all one flat upstairs after that.

Q. You mean the casino used to have rooms upstairs?
[fol. 241] A. No. They removed their lavatories upstairs in the rear.
Q. Lavatories?
A. Toilets.
Q. In the rear of your rooming house?
A. That's right.
Q. Do they use the rooms up there, too?
A. No, they can't. It's a different address altogether. Theirs is 1730 and ours is 1726.
Q. Do they send customers up to you?
A. No. If they are entertainers who want a room and we have one, they stop with us upstairs.
Q. What do you mean by "us"?
A. My partner and I.
Q. What is your partner's name?
A. Percy Williams.
Q. And how long has that been your business?
A. Oh, maybe ten or fifteen years, I guess.
Q. Steady?
A. That's right.
Q. You have always been right there?
A. I have been on the corner thirty-five years.
Q. I say, you have always been right there?
A. That's right.
Q. You haven't lived in any other city?
A. Oh, yes. I wasn't born there.
[fol. 242] Q. I mean during that period.
A. No.
Q. Now, who is this cousin that you speak of?
A. Not my cousin. It is Talber- Jennings' cousin.
Q. Who is it?
A. A lady by the name of Nettie Smith.

Q. Nettie Smith?
A. Yes.
Q. Well, how do you know Nettie Smith?
A. I have known Nettie Smith for some five or six years.
Q. The question is: how do you know her?
A. She came to Detroit and I met her in Detroit. She's stopped at my place.
Q. So that you have rooms for rent to men and women there?
A. That's right; to anyone.
Q. Is she a married woman?
A. Yes, she is.
Q. Did she come there alone?
A. The first time she came with her husband.
Q. And, then, she's been there alone, is that it?
A. That's right.
Q. Do you know where she lives in Chicago?
A. Yes, I do.
[fol. 243] Q. Where?
A. On Saint Lawrence.
Q. Where?
A. I think it's 4915.
Q. Is that where you have been staying since you have been here?
A. That's right.
Q. And that's the home of Talbert Jennings, isn't it?
A. I don't think so. I couldn't tell you.
Q. Where did he live?
A. I don't know where he lived.
Q. How far is Detroit from Chicago?
A. Oh, I presume about three hundred miles.
Q. You say you came here on December 28th?
A. That's right.
Q. You have been here ever since?
A. That's right.
Q. Why?
A. Why, I came over here to testify in this case, so it would be too expensive for me to run backward and forward.
Q. How much would it be?
A. How do you mean, "How much"?
Q. That's what I mean.
A. Train fare?

[fol. 244] Q. Yes.

A. I guess backward and forward would run about twenty dollars.

Q. Well, don't you know?

A. Not exactly.

Q. Why?

A. Because I don't know.

Q. Did you pay your fare to come here?

A. I certainly did.

Q. Do you know how much you paid?

A. $17.54.

Q. Is that for a round trip?

A. No, sir; one way.

Q. One way?

A. Yes, sir.

Q. How long did it take you to get here?

A. It took me about an hour.

Q. On the train?

A. On the plane.

Q. You say you came on plane, then?

A. That's right.

Q. And you could have gone back for $17.54, could you?

A. That's right.

Q. And in one hour?

A. That's right.

[fol. 245] Q. December 28th was last Tuesday, was it?

A. Last Tuesday morning.

Q. Do you do any other work in Detroit other than run that rooming house?

A. Not at the present.

Q. When did you do any other work last?

A. Well, I have worked ever since I've been there at numerous jobs.

Q. Did you ever buy and sell jewelry?

A. No, sir. I haven't been that fortunate.

Q. What other kind of work have you done there?

A. Well, I've worked as a process man; I've worked in factories; I've did porter work; I've worked for an insurance company.

Q. When was the last time you did work other than run the rooming house?

A. I've run the rooming house since the last five years. Previous to that, I worked as a process server.

Q. Process server?

A. That's right.

Q. During the last five years, then, the only thing you have done is run the rooming house?

A. That's right.

Q. And you have a partner for that?

[fol. 246] A. That's right.

Q. And all you have is ten rooms?

A. That's right.

Q. And you both make a living out of that, do you?

A. We do.

Q. Do you employ help there?

A. We do.

Q. How much help?

A. We've got a cook.

Q. One cook?

A. That's right.

Q. You serve meals there?

A. That's right.

Q. Who makes the beds?

A. Well, anyone that gets to them. Why, one of us will make them up. The cook lives with us, so he makes them up like we do.

Q. The cook is a man, too?

A. That's right.

Q. No women employed there?

A. That's right.

Q. Do you have a telephone there?

A. We have.

Q. How long have you known Talbert Jennings?

A. I met Talbert Jennings on May 22nd, 1948.

[fol. 247] Q. That is the first time you ever met him in your life?

A. That's the first time I had ever seen him.

Q. But you knew his relatives?

A. That's right.

Q. How long did you say you had known them?

A. Five years.

Q. And that's just from them coming to Detroit and rooming at your place, is that right?

A. The first time they didn't room at my place. I met them around different places.

Q. Where?

A. Oh, night clubs, and a girl in Detroit that knowed the young lady. She introduced me to her and her husband out at different spots we'd met.

Q. Night clubs?

A. That's right. So I invited them around.

Q. Then, on May 22nd, Talbert Jennings came up there?

A. That's right.

Q. And he had been sent to you by his aunt Nettie Smith?

A. That's right.

Q. And did Nettie call you?

[fol. 248] A. She did.

Q. On the phone?

A. That's right.

Q. And tell you he was coming?

A. That's right.

Q. And he wanted to get a job as a barber?

A. He wanted to find work. He told me he was a licensed barber.

Q. When did he tell you he had worked at it last?

A. Well, I don't think I asked him that question.

Q. You were taking him around to other barbers to get a job for him and you didn't ask him what experience he had recently?

A. He told me he was a licensed barber, and that was enough for me.

Q. That was enough. Whether he had worked ten years or two months ago, it didn't matter?

A. That's right.

Q. You don't lose the touch?

A. That's right.

Q. Are you a barber?

A. No, I'm not.

Q. How do you know whether he loses the touch or not?

[fol. 249] A. I don't know whether, if you walked into the barber shop, you can tell whether he lost the touch or not. Some of them did some pretty bad jobs on me.

Q. But you were taking him around to your friends' shops to recommend him for a job, and you don't know whether, at any time during those trips around Detroit, he said he had worked as a barber in the last month or the last ten years?

A. He told me he had a license as a licensed barber, and I don't know whether he ever cut a head of hair or not.

Q. You don't know from anything what he said to these people that you took him around to?

A. They talked to him, and they seemed to be satisfied.

Q. Tell me the barbers, now, that you took him to in Detroit and give me their address.

A. I took him to the Wolverine Barber Shop at 1720——

Q. (Interposing.) Just a minute, take it easy. The Wolverine Barber Shop?

A. The Wolverine Barber Shop at 1720 Saint Antoine.

Q. 1720 Saint Antoine?

A. That's right.

[fol. 250] Q. That's the one that's practically in your building.

A. It's in the same block. Not the same building, the next building.

Q. Is that the one you said you had an interest in or something?

A. That's right.

Q. Go ahead.

A. The barber shop on Hastings Street. I can't tell you the numbers of them, but they can be located in the telephone directory, I presume; Swanson's.

Q. Hastings Street. Is that Swanson's?

A. Swanson's Barber Shop on Hastings Street.

Q. Is Hastings Street a big street?

A. It's a notorious street in Detroit, so it's pretty well known. It's not so large as your street.

Q. What is it notorious for?

A. For everything. All the different merchants are on that street. They have everything on this street.

Q. Don't you know on what block Swanson's is on?

A. It must be between Elliott. It's in the project there. It's between Elliott and Bruce Street, I'm not positive of that. It's in our project.

[fol. 251] Q. Where else did you take him to?

A. I taken him to Kyle's Barber Shop on Farnsworth.

Q. How do you spell "Kyle's"?

A. K-y-l-e-s.

Q. Where is that?

A. Farnsworth and Beaubin Street.

Q. Spell it.

A. Beaubin; B-e-a-u-b-i-n.

Q. Go ahead.

A. And the barber shop on the west side, I taken him. It's on McKinley. I can't tell you the address of that.

Q. McHenry Street you say?

A. McKinley.

Q. You don't know the name of that?

A. I don't know the name of the barber shop. I just know the fellow that runs it.

Q. What's his name?

A. Edward Jones.

Q. And this barber shop, now, that you have an interest in, the Wolverine. How many chairs does that have?

A. We've got ten in there.

Q. Were they all occupied?

[fol. 252] A. Yes, they stay occupied.

Q. Pardon me?

A. Yes, they stay occupied. They rent the chairs out to the barbers individually.

Q. You couldn't make room for a friend of your cousin's?

A. We'd have to put a new chair in there or take one of the fellows out that's been in there for years.

Q. I say, you couldn't make room for Nettie's boy or relative?

A. I guess in time it would have been done.

Q. There wasn't a barber shop in Detroit that needed a man?

A. Not at the time. And, then, there was some question about his license.

Q. Is that the only work that he told you he could do?

A. He said he would do most anything.

Q. And you couldn't find a job for him in all Detroit?

A. I guess if we had——

Q. You have lived there thirty-five years?

A. Factories.

[fol. 253] Q. Could you have found him a factory job?

A. I guess, possibly, if we had had the time.

Q. Did you try?

A. I never tried.

Q. Why not?

A. The young man run out of money and he had to get back to Chicago.

Q. How do you know he ran out of money?

A. Well, he told me he was sending a message to his girl friend to send him some money.

Q. Did you loan him any?

A. No, I didn't.

Q. And he was there all the time?

A. That's right.

Q. For a whole week, is that right?

A. Yes.

Q. When did you write out these receipts?

A. I think I wrote the first one on the Saturday night that he got in there, when he asked me about a room, and I told him, well, he could room here; the first receipt. And, I think, the second one was about two days before he left there. I think it was the day before a holiday that came along there, Decoration Day, I believe it was. It was [fol. 254] either that or the last day he was there. I just can't remember.

Q. What did you charge for the room?

A. Well, we charge $10.00 a week without board. And the last two or three days there, I think I charged him a dollar a day.

Q. It's $10.00 per week per room?

A. That's right; without the board.

Q. Without board?

A. That's right.

Q. That includes linens, does it?

A. That's right.

Q. And maid service?

A. Well, if you want to call me a maid, why, yes.

Q. Well, somebody that makes up the bed.

A. Service.

Q. And cleans the room out every day?

A. That's right.

Q. Do you rent that building?

A. The building?

Q. Well, the premises.

A. Yes, we do.

Q. What do you pay for it?

A. We pay $65.00 a month.

[fol. 255] Q. Does your partner work there full time?

A. My partner is there all the time. My partner is sick.

Q. He is there all the time?

A. Most of the time. He goes out and comes back. He has diabetes.

Q. Is the cook there full time?

A. The cook is there every day and cooks two meals a day.

Q. Is he on a salary?

A. That's right.

Q. How much?

A. We pay him $2.00 a day and his board.

Q. Two dollars a day for a cook?

A. That's right. The man is seventy years old. He's not a fancy cook.

Q. He's seventy years old and makes the beds and does the cooking?

A. He does the cooking, and we all make beds and mop and scrub.

Q. Now, this exhibit 2. How many days is that for?

A. This was for the first week he was there.

Q. Well, how many days?

A. For seven days.

[fol. 256] Q. What days?

A. He came in on Saturday and this went to the next Saturday.

Q. Was that the twenty-second?

A. The twenty-second was when he arrived.

Q. Would that include the twenty-ninth?

A. He was paid up for the twenty-ninth, too.

Q. What does it say there (indicating)? What is the receipt for?

A. Yes, until the twenty-ninth. From May 22nd until the twenty-ninth.

Q. That included the twenty-ninth, then, did it?

A. That's right.

Q. That would be eight days.

A. Well, on the twenty-second that he come in there, he got in around eleven or eleven-thirty at night.

Q. So you didn't charge him for that night, is that right?

A. Yes, we charged him for it.

Q. Is it $10.00 a week or was it $10.00 for eight days?

A. It was $10.00 for eight days. We didn't charge him for the day of the twenty-second because he came [fol. 257] in there——

Q. (Interposing) Then your rates aren't fixed at $10.00 a week, but the way you make the receipt, is that right?

A. That's right.

Q. Are you sure you didn't make that receipt after you got here?

A. After I got here?

Q. Yes.

A. I'm positive that I didn't make that receipt after I got here.

Q. Now, this receipt, Defendant Jennings' Exhibit 3. What days was that for?

A. That was from the twenty-ninth until June 1st.

Q. Twenty-ninth, thirtieth and thirty-first?

A. Until June 1st.

Q. From the twenty-ninth until June 1st?

A. That's right.

Q. I say, the twenty-ninth, thirtieth, thirty-first and June 1st?

A. He left on June 1st.

Q. Well, four days?

A. He didn't stay that night of June 1st.

Q. The receipt is for four days?

[fol. 258] A. The receipt reads that, but he didn't stay.

Q. Four days for $3.00 and eight days for $10.00. Which is it now? Which is it now?

A. It's eight days for $10.00 and four days for $3.00. The young man didn't have any money.

Q. Now, the young man didn't have any money?

A. At the last part of it. And then he sent and got some money.

Q. The last part he sent and got some money, did you take it from him?

A. I took my $3.00.

Q. Did you give him another receipt?

A. I give him that receipt there for $3.00.

Q. He didn't have any money?

A. He run out of money.

Q. But he got money?

A. I don't know where he got it from, but he told me he got it from his girl friend.

Q. But he got it?

A. He sure did. The money came to me.

Q. Pardon me?

A. The money came to me. I know he got it.

Q. What do you mean it came to you?

A. It came to my house, in care of me, and I signed for it.

[fol. 259] Q. Was it addressed to you?

A. No. It was addressed to Talbert Jennings apply Jimmie Hughes, 1726 Saint Antoine.

Q. How did it come?

A. By telegram.

Q. They brought it right to you?

A. That's right.

Q. They didn't address it to him at your address?

A. It was addressed to him at my address, but apply to Jimmie Hughes.

Q. In care of Jimmie Hughes?

A. That's right.

Q. And the telegraph company gave you money?

A. I signed for it.

Q. And they gave you money?

A. That's right.

Q. The messenger came right to the door with the money?

A. That's right.

Q. Is that the way they do it in Detroit?

A. That's right.

Q. They don't have you come to the office and come for it and get it there?

[fol. 260] A. In your telegram in Detroit they have a check in there. You take the check down there, and then you have to show identification that you are the person that this check is for, and then you sign the check for it.

Q. You say they brought the money for you, and then you say they brought the check to you.

A. A check is money to me, if it comes like that.

Q. You are in court and I want you to tell exactly what happened.

A. I realize that. I'm trying to.

Q. So they didn't bring the money to you, they brought you a check?

A. They brought me a check for the money.

Q. How much was that for?

A. I'm not quite sure. I think it was $47.00.

Q. Knowing, then, that he had $47.00, you still didn't charge him for the room?

A. I did charge him for the room.

Q. Ten dollars a week?

A. I charged him $3.00.

Q. I say, you didn't charge him $10.00 a week then?

A. No. I charged him for the last three days he was there.

[fol. 261] Q. Did you take that up with your partner?

A. I didn't have to take it up with my partner.

Q. Why?

A. It's not necessary because we have been together quite a few years and he believes me and I believe him.

Q. Well, you have got to make that money stretch to pay three people and pay the rent, don't you? There's a living for three people. Neither of you do anything else. You told me you don't do anything else.

A. I haven't done anything for the last five years.

Q. And the other man is sick, I believe, and the cook doesn't do anything else?

A. That's right.

Mr. Geter: Your honor, I think Mr. Brown should ask a question and then get an answer.

Mr. Brown: I got an answer. He said, "That's right."

Q. So you don't get $10.00 a week from the rooms, then, do you?

A. Yes, we do. We just don't put them out if they're a day over, or something like that.

Q. You didn't have to put this man out. He got [fol. 262] $47.00.

A. I don't know whether he knew he was going to get $47.00 or not.

Q. But he did get it, and then you say you gave him the receipt?

A. That's right.

Q. Isn't that right?

A. That's right.

Q. Now, when did he tell you he was going to leave Detroit?

A. He told me that he would have to leave because he was running short of money. I think it was on Saturday, the day before Decoration Day. I don't know whether it was Saturday or Sunday. It was the day before Decoration Day.

Q. That's when he told you he had to leave?

A. Yes.

Q. Decoration Day was what?

A. It was the 30th of May, isn't it?

Q. I'm asking you.

A. The last day of May.

Q. Thirty days has September, April, June and November, all the rest have thirty-one except February, when I was in grammer school.

[fol. 263] A. The 31st day of May, then.

Q. So he told you the day before Decoration Day that he had to leave the next day?

A. That's right.

Q. Did he leave the next day?

A. He left on June 1st.

Q. But he told you that he had to leave the next day?

A. Yes. He had to send and get some money because he had to leave.

Q. So did you make a receipt for him at the time that he said he had to leave?

A. No.

Q. Then why did you date the receipt May 29th?

A. That was the last time that his first week was up, on May 29th.

Q. Why did you give him a receipt, then, if he didn't have any money on May 29th?

A. He had money when he first come. He paid in advance.

Q. But I thought you said you didn't give him this receipt until he got the $47.00 and paid you?

A. There is two receipts there.

Q. I'm talking about the second one.

A. The second one I gave him when he got his money.

[fol. 264] Q. So he got the money when?

A. On the 1st of June.

Q. Then why didn't you give him a receipt dated the 1st of June?

A. I dated it back to the time he owed me.

Q. Why should you date receipts back?

Mr. Geter: Object to that, Judge, why he should.

The Witness:

A. The man owed me——

The Court: The objection is overruled.

The Witness:

A. If the man owed me from the twenty-ninth up until the day he left, maybe he didn't get any money.

Mr. Brown:

Q. If he paid you today, would you still date it back to the twenty-ninth, saying he paid you money?

A. If he paid me money, I would date it back to the time from the time he left.

Q. Is your renting of rooms under government control?

A. The building is under control.

Q. Your renting rooms?

A. No, it is not.

Q. You can charge any rent you want?

A. We can't go over.

Q. Then you are under government control.

[fol. 265] A. We have never had any complaints.

Q. They look at your books, do they?

A. Certainly.

Q. And you make receipts for any day you wish to make them?

A. Not for any date.

Q. The receipt is dated the day you receive money, is that right?

A. That's right.

Q. But you dated this the twenty-ninth?

A. I dated it from the time that his last rent was up until the time he left.

Q. But you did date it May 29th?

A. I did.

Q. And at that time did you know he was going to stay until June 1st?

A. I dated the receipt on June 1st, when he was leaving.

Q. This is dated May 29th, isn't it?

A. That's right.

Q. Then you dated it May 29th?

A. May 29th up until June 1st.

Q. So when you wrote this May 29th to June 1st, you wrote it on May 29th?

[fol. 266] A. I wrote it on June 1st.

Q. So you don't date the receipt on the date it bears?

A. I dated this receipt on June 1st, and it was from May 29th.

Q. When did you date this May 22nd?

A. On May 22nd, the day he paid me his first rent; the date I told him how much it would be.

Q. So you date it from the day they pay the rent?

A. That's right.

Q. Did you date this on May 29th?

A. I dated that May 29th to June 1st.

Q. Why didn't you date it on the day he paid you, June 1st?

A. I did date it June 1st.

Q. No. You dated it May 29th.

A. That's when he was supposed to pay me.

Q. Do you give every one of your tenants a receipt?

A. All the time?

Q. Yes.

A. That's right.

Q. And right at the time they pay you?

A. Whenever they pay their rent, why, they get a [fol. 267] receipt.

Q. When were you notified that you were going to be a witness in this case?

A. Oh, I was notified some five months ago.

Q. Five months ago?

A. Yes.

Q. You didn't come here five months ago, did you?

A. No. They didn't tell me to come. They said would I come when the case came up. So previous to that, I think the case has been up two or three times, and they have notified me each time and then notified me again that it was put over until another date.

Q. And you knew at the time that you came, December 28th, that you could get here in an hour on a plane, didn't you?

A. Oh, Yes. I told them that.

Q. Why did you come December 28th, then?

A. I was notified the day before that. I got a telegram. Maybe, I guess it was around eight or nine o'clock at night.

Q. From whom?

A. From Mrs. Jackson.

Q. Evelyn Jackson?

A. Evelyn Jackson.

Q. She knew where to telegraph you, didn't she?

[fol. 268] A. Yes, she did.

Q. What did she say?

A. She told me I was needed, and to come at once, and to be here.

Q. Come at once?

A. To be here by ten o'clock in the morning at the Cook County Criminal Court.

Q. On December 28th, is that right?

A. That's right, on December 28th.
Q. Did you get here by ten o'clock December 28th?
A. I did.
Q. You have stayed here ever since?
A. That's right.
Q. At Smith's house?
A. That's right.
Q. Did you talk to Mr. Geter?
A. Yes, I have.
Q. When did you talk to him first?
A. Well, I think I talked to him after the court was over the first day I was here. That was on December 28th.
Q. You haven't been doing any work since you got here?
A. I have come here every day.
[fol. 269] Q. Were you promised your expenses?
A. That's right.
Q. How much?
A. They didn't make any promise to me about how much. They told me they would pay my expenses and see that I would have somewhere to stay here.
Q. What were your expenses to be?
A. My expenses would just be my train fare or my plane fare.
Q. Nothing for the days you have spent here at all?
A. Well, the people here, Mrs. Smith, has been taking care of me.
Q. What?
A. Mrs. Smith has been taking care of me; Mr. and Mrs. Smith.
Q. But who is making the beds in Detroit?
A. Well, somebody is making them.
Q. What?
A. Somebody is making them, I'm not there. I couldn't swear who is making them.
Q. Is somebody going to get paid while you are gone?
A. I don't know. They possibly will.
Q. Who is making out the receipts?
Well, did I understand you to say that when Jennings [fol. 270] came to Detroit you met him at the station?
A. That's right.
Q. Why?
A. Because Mrs. Smith told me he was a perfect stranger, and that was the first time he had ever been in Detroit. I

know how Detroit is. It's not like this city. You can easily get lost in Detroit.

Q. It's a big city?

A. No, not like this one. This is a big city to me.

Q. Did anybody meet you at the plane?

A. Yes.

Q. Who?

A. Mrs. Smith.

Q. Here in Chicago?

A. That's right.

Q. And how far is the station from your place in Detroit?

A. Oh, I'd say about two miles, three miles.

Q. Did you drive down there?

A. That's right.

Q. What time did you meet him there?

A. I met him there—I was down there about eleven o'clock. I think he got in around eleven-thirty or eleven-fifteen.

[fol. 271] Q. Did you take him to the train when he came back?

A. When he left Detroit?

Q. Yes.

A. Yes, I did.

Q. When?

A. On June 1st.

Q. What time?

A. Oh, I taken him to the train, I guess, around about,—it was either between two or four in the afternoon. I can't say just the exact time.

Q. When you came by train, did you check to see how long it takes to get here?

A. No.

Q. Do you know how long it takes to get here by train?

A. No, I don't.

Q. You never came by train?

A. I did come by train, but it's been some time ago, and it took a long time; twenty years ago. It seems to me I rode all day.

Q. What time did you get that money order, do you know?

A. The money order must have come around sometime after twelve because it wasn't very long after that that he left.

Q. You say it came about a quarter after twelve?

[fol. 272] A. I don't say just exactly, but it was sometime after twelve; and it wasn't long after that that he left.

Q. Could it have been closer to three?

A. I couldn't say. I don't know.

Q. You couldn't say?

A. No.

Q. Did you ever receive any money orders from Chicago before?

A. Not me.

Q. Do you know how far you are from your telegraph office?

A. In Chicago?

Q. Three hundred miles, you told me, didn't you?

A. Yes. In Detroit I'm three hundred miles from the telegraph office.

Q. How far are you from the telegraph office in Detroit?

A. Now?

Q. No, not now. When you are in the Antoine address.

A. How far is the telegraph office from my home?

Q. That's what I want to know.

A. Oh, I'm about a mile and a half.

Q. How did they deliver the telegram to you?

A. By boy.

Q. On foot?

[fol. 273] A. Well, I don't know. He may have had a bicycle. That's what they usually have.

Q. He had a bicycle. He brought the telegram to you, and it had a check or some sort of an order for payment on it?

A. Yes.

Q. What did you do with it?

A. I give it to Talbert Jennings.

Q. Was he waiting right at the door with you for it?

A. I think he was downstairs when it came.

Q. In the casino?

A. Downstairs in the club.

Q. Without any money?

A. That's right.

Q. What was he doing in the casino without any money?

A. I don't know. Probably looking around.

Q. Did you go down looking for him?

A. No. I think he seen the boy come in.

Q. How do you know he saw the boy come in?
A. He came right up after it.
Q. Then what did you do?
A. I handed it to him.
Q. Then what?
A. That was all. Seeing that, he got it cashed.
[fol. 274] Q. Where?
A. I carried him to a friend of mine, and he cashed it.
Q. Pardon me?
A. I carried him to a friend of mine, and he cashed it.
Q. You mean you don't have to take that back to the telegraph office?
A. No, not a telegraph check, you don't.
Q. Where did you take him to get it cashed?
A. Down to the bowling alley.
Q. Where is that?
A. On Adams Avenue. It's around the corner from me and across the street.
Q. Adams Avenue?
A. That's right.
Q. You sure gave this boy service, when he was there for three bucks for four days.
A. I liked him.

Mr. Geter: I object to this and move that it be stricken, your honor.

The Court: It may be stricken.

Mr. Brown:

Q. How did you take him over to the bowling alley?
A. We just walked over there. It's just about a half a block.
[fol. 275] Q. Did you help him pack his bags?
A. No.
Q. Did he have a bag?
A. Yes, he did.
Q. How long did it take him to pack his bag after he got the letter at your house?
A. I think his bag was packed when he got the letter, I didn't go into his room, but I'm quite sure it was.
Q. He didn't have it down in the casino with him waiting for the boy?
A. No.
Q. It was still upstairs?

A. That's right.

Q. Then you went around to the bowling alley, and how far did you say it was on Adams Avenue?

A. About a block.

Q. Did you walk?

A. That's right.

Q. Then you had to come back to the hotel again, is that right?

Q. Then what did you do when you got back?

A. He got ready to get a cab, and we went to the station.

Q. I thought you took him in your car?

[fol. 276] A. I don't have a car.

Q. How did you meet him at the railroad station?

A. I went down on the street car and came back in a cab.

Q. You left your hotel and took a street car to the railroad station to meet a twenty-six year old man because he might get lost in Detroit, is that right?

A. That's right.

Q. And you want this jury to believe that?

Mr. Geter: I object to that, Judge.

The Court: The objection is sustained.

Mr. Brown:

Q. Had you ever seen him before?

A. Never seen him before.

Q. How did you find him in that big station?

A. Well, he was described to me over the telephone.

Q. How was he described to you?

A. Being a tall light boy.

Q. A tall light boy?

A. That's right.

Q. And that's all you had to look for at the station?

A. That's right.

Q. A tall light boy in Detroit?

A. That's right.

Q. How many million people live in Detroit?

[fol. 277] A. Well, I think something like a million and a half or a million and three-quarters.

Q. How many railroad stations in Detroit?

A. There is three.

Q. How did you know which one to go to?

A. It says Michigan Central.

Q. How did you know which one to go to?

A. She told me Michigan Central.
Q. Who told you?
A. Mrs. Smith.
Q. Nettie Smith?
A. That's right.
Q. Told you to go to the Michigan Central and look for a tall light boy?
A. Coming in on the train from Chicago.
Q. How many trains come from Chicago?
A. We have quite a few.
Q. Did you look at every one?
A. No.
Q. What one did you look at?
A. The one that was supposed to get in at 11:30.
Q. And this is May 22nd?
A. That's right.
Q. You remember that train was supposed to be in at 11:30?
A. That's right.
[fol. 278] Q. Did it get in on time?
A. I'm not positive. I got in there at eleven o'clock. I'm not positive whether the train got in on time or not.
Q. How many people did you question before you found the tall light boy?
A. I don't think I questioned anybody. I stopped one fellow and asked him did he see a light colored boy on the coach with him, and a few minutes later Talbert walked up with his bag.
Q. Walked right up to you?
A. That's right.
Q. Had he ever seen you before?
A. Never in his life.
Q. You say that train was due at 11:30. Was that A. M. or P. M.?
A. P. M.
Q. And you took a street car down there?
A. Yes. The depot car runs a half a block from my house.
Q. Did you take anybody with you?
A. No.
Q. What kind of baggage did he have?
A. Just an ordinary suitcase.
Q. A big one or a little one?
[fol. 279] A. It was a pretty big size. What you might call a two-suiter.

Q. But when you went back to the station with him on June 1st, you took a cab?

A. Yes. I think we were a little late.

Q. A little short of money, too, weren't you?

A. I wasn't short of money.

Q. No. I mean the boy that you gave a break to on the rent here on account of he was short of money. And then you took a cab with him, is that right?

A. That's right.

Q. In spite of the fact that there was a street car a short distance away that goes to the depot?

A. There was a difference in the time of day. Traffic was pretty heavy.

Q. Who paid for the cab?

A. He did.

Q. How did you get back to the lodging house, then?

A. On the street car.

Q. Now, inasmuch as he was taking a cab on June 1st, did you still feel, in that big city, that he might get lost going to the depot?

A. No. But I liked him and I wanted to see him off. [fol. 280] Q. You just liked him?

A. That's right.

Mr. Brown: That's all.

Mr Geter: Just a minute.

I want to offer these in evidence, your honor, as Defendant Jennings' Exhibits 2 and 3, these being the receipts identified by the witness.

The Court: No objection?

Mr. Brown: No objection, your honor.

The Court: They may be received and marked accordingly.

(Said documents so offered and received in evidence were marked Defendant Jennings' Exhibits 2 and 3, respectively, and are in words and figures as follows:)

Mr. Geter: That's all, you may step down.

(Witness excused.)

[fol. 281] SUPPLEMENTARY EXHIBIT #2 (part two)

[Title omitted]

Before Judge Ashcraft and a Jury.

Indictment No. 48-1247

Tuesday, January 11th, 1949,
10:00 o'clock A. M.

Court met pursuant to adjournment.
Present: Mr. Brown, Mr. Phillips, Mr. Geter.

(And thereupon the following proceedings were had in the presence and hearing of the jury, to-wit:)

Mr. Brown: Richard Ayers.

RICHARD AYERS, a witness called on behalf of the State, in rebuttal, having been previously sworn, was examined and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you state your name, sir?
A. Richard Ayers; A-y-e-r-s.
[fol. 282] Q. Where do you live, sir?
A. 710½ Austin Boulevard, Oak Park.
Q. Your occupation?
A. Police officer of the Village of Oak Park.
Q. How long have you been a police officer?
A. Approximately a year and a half.
Q. Prior to that time?
A. Police officer of the Chicago Union Station.
Q. How long?
A. About two years.
Q. Prior to that?
A. United States Army.
Q. How long?
A. Six years.
Q. Now, in May of 1948, were you a police officer of the Village of Oak Park?
A. Yes, sir.

Q. In June of 1948, were you a police officer of the Village of Oak Park?

A. Yes, sir.

Q. Calling your attention specifically to the morning of June 6th, were you on duty?

A. Yes, sir.

Q. What was your tour of duty or your hours of duty?

[fol. 283]. A. Eight A. M. to four P. M.

Q. June 6th?

A. Yes, sir.

Q. What was your particular assignment on that tour of duty?

A. Station man.

Q. Meaning what?

A. I stayed inside the station and took care of the lockup, and booked arrests at the desk, and that's about all.

Q. Where is the lockup in the Oak Park Police Station?

A. It's below the sergeant's office. It's in the basement.

Q. What does that consist of?

A. Four cells, a kitchen, a shower room.

Q. Now, on that day, and on that tour of duty from eight A. M. to four P. M., did you at any time see any defendant molested by any person while in your lockup?

A. No, sir.

Q. Or while on the floor where your lockup is located?

A. No, sir.

Q. When the prisoners are brought to the lockup, who [fol. 284] brings them to the lockup?

A. The station man.

Q. And you are referring to yourself?

A. Yes, sir. On that particular date I was.

Q. In other words, if the lieutenant or captain or sergeant had a prisoner upstairs and wanted to put him in the lockup, who would go for him during that day, June 6th, between eight A. M. and four P. M.?

A. They'd come to me, and I'd get the keys, and bring him up.

Q. Then you lock them in the cell, and they are in your custody and control until they are brought upstairs again?

A. Yes, sir.

Q. Did you see any defendant, while he was in your custody and while he was on your basement floor in the lockup, with handcuffs behind his back and pulled up to some sort of an arrangement in the ceiling?

A. No, sir.

Q. Did you see anyone strike or beat any one of these defendants, pointing out Jennings, now, and Morgan, on June 6th, 1948?

A. No, sir.

Q. Were those men fed while they were there?

[fol. 285] A. I fed them in the morning, sir.

Mr. Brown: You may cross examine.

Cross-examination.

By Mr. Geter:

Q. Mr. Ayers, how many prisoners did you have down there when you arrived at your place on June 6th, the morning of June 6th?

A. As I recall it, we only had two of them.

Q. You had two prisoners?

A. As I recall, yes.

Q. Who were they?

A. I believe it was Morgan and Smith. I'm not even sure about Smith.

Q. Morgan and Smith?

A. Yes. I'm not sure about Smith.

Q. Which one do you call Smith?

A. Smith's the little fellow on the end with the mustache. (Indicating).

Q. This little fellow here (indicating)?

A. That's right.

Q. In the brown suit. And Morgan is the gentleman with the gray suit, is that right?

A. Yes, sir.

Q. In the middle here (indicating)?

[fol. 286] A. Yes, sir.

Q. Was Jennings down there that morning?

A. No, sir. Jennings was in River Forest.

Q. So, according to your calculation, you had two vacant cells there when you arrived, is that right?

A. As I recall it. I wouldn't swear to that last statement because I'm not sure whether we had Smith or not.

Q. Your are not sure you had Smith?

A. No, I'm not.

Q. Then, if you didn't have Smith, you had three vacant cells?

A. It's possible, yes.

Q. You had four altogether, so it's just a little mathematics there.

A. Yes, sir.

Q. When was the last time you had been down to the lockup prior to eight A. M.?

A. I'd say the previous day. I believe I was chauffeur the previous day there, also.

Q. Then you got off at four o'clock on the afternoon of the fifth?

A. Correct.

[fol. 287] Q. Now, when you left that day, was either Smith or Morgan there?

A. Which day are you referring to?

Q. The fifth. When you left on the afternoon of the fifth to go home.

A. No, sir.

Q. In other words, had you seen either of the prisoners prior to that time?

A. No, sir.

Q. So what went on between the time you left at four o'clock on the afternoon of the fifth up until the time you came in, you don't know anything about that?

A. No, sir.

Q. Well, did you see Jennings that morning?

A. On the morning of the sixth, yes.

Q. What time?

A. I believe it was somewhere around ten A. M.

Q. Where did you see him at that time?

A. River Forest happened to call us and asked if we were going to feed the prisoner or if they were to feed him, so they dispatched a squad car over to River Forest and they brought Jennings back.

Q. When they brought him back about ten o'clock, where [fol. 288] did they take Jennings and what did they do with him?

A. He was in the sergeant's office all through the time he was there, and I fed him, and he was then sent back to River Forest.

Q. Did you feed him in the sergeant's office?

A. Yes, sir.

Q. What did you give him?

A. Coffee and sweet rolls.

Q. And did he eat them?

A. He ate all but a half of one, which he put in his pocket and took back.

Q. Took that back to River Forest?

A. Yes, sir.

Q. And you didn't see Jennings any more that day, did you?

A. No, sir.

Q. What happened to him from then on you don't know, is that right?

A. No. He was in River Forest at that time.

Mr. Geter: That's all, Mr. Ayers.

Mr. Brown: That's all.

(Witness excused.)

[fol. 289] Reporter's Certificate to foregoing omitted in printing.

[fol. 290] SUPPLEMENTARY EXHIBIT #3

[Title omitted]

Before Judge Ashcraft and a Jury

Indictment No. 48-1247

Tuesday, December 28th, 1948

Present: Mr. Brown, Mr. Phillips, Mr. Geter.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. Brown: I don't believe this witness has been sworn, Your Honor.

The Court: Swear the witness, please.

FRED ANDERSON, a witness called on behalf of the State, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name, sir.
A. Fred Anderson.
Q. Fred Anderson?
A. That's right.
Q. Where do you live, Fred?
[fol. 291] A. 4631 Langley.

Mr. Geter: I can't hear.

Mr. Brown:

Q. 4631 Langley?
A. That's right.

The Court: Will you repeat that, please?
A. 4631 Langley Avenue.

Mr. Brown:

Q. How long have you lived there?
A. Off and on ever since I was about twelve, I guess.
Q. What is your business?
A. My dad has a shoe repair shop and I help him.
Q. Where is that located?
A. 5222 State Street.
Q. How long have you been so employed?
A. Ever since I came out of the Army.
Q. Since you came out of the Army?
A. That's right.
Q. Now, on the 6th day of June, 1948, were you in the Oak Park Police Station?
A. The Oak Park?
Q. Yes.
A. No, I have never been in Oak Park.
Q. Oak Park.
A. Oh, yes.

The Court: What date?
Mr. Brown: The 6th day of June.

[fol. 292] Q. Did you, on that day, know Edgar Morgan?
A. Yes.
Q. Do you see him in the courtroom?
A. Yes, I do.
Q. Will you point him out?
A. Over there (indicating).

Mr. Brown: Indicating, for the record, the defendant Edgar Morgan.

Q. Did you see him in the Oak Park Police Station at that time?
A. Yes, I did.
Q. Did you know Officer Hutchison?
A. Yes, I did.
Q. Do you know an Officer Piotter?
A. Yes, I do.
Q. Do you know a Lieutenant Nester?
A. Yes.
Q. Did they discuss with you the matter of some stolen jewelry?
A. Yes, they did.

Mr. Geter: Judge, I am going to object to that question. Let him find out what the conversation was that he had with them, and don't let him suggest to him what they talked about.

Mr. Brown: I am not interested in the conversation. I just want to know if they talked to him about it.
[fol. 293] The Court: All right, he may answer.
The Witness: Yes.

Mr. Brown:

Q. During their conversations with you in the Oak Park police station on June 6th or June 7th, 1948, did these police officers strike or beat you or molest you in any way?
A. No.
Q. Did they——

Mr. Geter: (Interposing.) Wait a minute. I didn't get his answer.
The Witness: No.

Mr. Brown:

Q. How long were you in the presence of those police officers on the sixth or the 7th day of June; specifically, the sixth?

A. That's the day we stood temporary trial, or something.

Q. I don't know about that.

A. It was only a matter of hours.

Q. Pardon me?

A. We came from the County Jail that day to Oak Park.

Mr. Geter: Judge, I can't understand this witness.

The Court: You will have to speak louder.

The Witness: A. I say, on the 6th day of June, I think we came from the County Jail and had a hearing, and, [fol. 294] after the hearing, I was let loose that day.

Mr. Brown:

Q. No. That's the day when you were confronted with Edgar Morgan out there at the police station.

A. Yes?

Q. Well, whatever day it was. Any day you were in Oak Park in the police station, in connection with this jewelry, did any police officer out there lay a hand on you at any time?

A. No.

Q. Did any police officer lay a hand on Edgar Morgan, in your presence, at any time?

A. Not in my presence, no.

Q. Or in another room where you could hear him?

A. No, not as I know of.

Mr. Brown: You may cross-examine.

Cross-examination.

By Mr. Geter:

Q. Mr. Anderson, you were arrested on what date?

A. I couldn't give you the exact date.

Q. You don't remember the date?

A. No, I don't.

Q. Well, how long had you been arrested before you went to the Oak Park police station?

A. I was arrested that afternoon, and I went to the Oak [fol. 295] Park police station that night.

Q. The same night?
A. That's right.
Q. Where were you arrested?
A. 4201 Ellis Avenue.
Q. What is at 4201 Ellis?
A. That's where I was living. My girl stayed there and I was staying there with her at the time.
Q. You were staying at 4201 Ellis?
A. That's right; as well as 6354 Maryland.
Q. Who arrested you?
A. Sergeant Hutchison and——

The Court: You will have to speak a little louder. I don't think the reporter can get it all.

The Witness:

A. Sergeant Hutchison and Sergeant Myles.

Mr. Geter:

Q. And did you know them prior to that time?
A. No.
Q. And they arrested you at this address. Where did they take you?
A. First, they took me to 48th Street.
Q. How long did you stay at 48th Street?
A. I didn't get out the car. Then they took me down to 11th Street.
Q. Where did they take you from 48th Street?
[fol. 296] A. To 11th Street.
Q. How long did you stay at 11th Street?
A. Until that night.
Q. About how long that night?
A. I couldn't say exactly. I had no watch.
Q. Approximately.
A. About one o'clock, I think, they took me to Oak Park. I don't know.
Q. You know Officer Piotter?
A. Yes, I do.
Q. And you know Officer Hutchison?
A. Yes, I do.
Q. You had lunch with them today, didn't you? Did you have lunch with them today?

A. That's immaterial, isn't it? Well, yes.
Q. What do you mean it's immaterial?

Mr. Brown: He answered, "yes." He said, "yes."

Mr. Geter:

Q. How did you happen to come over here today?
A. Subpoenaed.
Q. Who subpoenaed you?
A. I imagine the State did. I don't know.
Q. You imagine the State did. When did you get your subpoena?
A. I don't know much about law. All I can tell you is [fol. 297] what I know.
Q. How did you happen to come over here?
A. I had a subpoena to appear here.
Q. And when you came here, whom did you see?
A. Who did I see?
Q. Yes. Who did you go see?
A. Well, I went down first to see Mr. Brown.
Q. Yes?
A. (Continuing:) And to find out where I was supposed to appear at. He said here.
Q. Who did you talk to, besides Mr. Brown, about this case?
A. About the case?
Q. Yes.
A. I discussed the case with no one.
Q. You didn't say a word to Officer Hutchison?
A. About the case?
Q. Yes, about the case.
A. No.
Q. It wasn't mentioned at all?
A. I wouldn't say it wasn't mentioned at all, but it wasn't anything said.
Q. Did you talk to him or didn't you talk to him?
A. Of course, I talked to him.
Q. Of course, you talked to him?
[fol. 298] A. Yes, I did.
Q. You can just say "yes." That's all right. Did you talk to Officer Hutchison about the case?
A. No, I did not discuss the case with anyone.
Q. Did you talk to Lieutenant Nester about the case?
A. No.

Q. And you were at 11th Street until what time did you say?

A. I'd say approximately twelve o'clock, eleven o'clock, something like that.

Q. Eleven or twelve o'clock?

A. Yes.

Q. Do you remember what day of the week that was?

A. No, I don't.

Q. You don't have any idea of the day of the week?

A. No.

Q. How did you get from 11th Street to Oak Park?

A. Well, in an Oak Park police car.

Q. How's that?

A. An Oak Park police car.

Q. Who was with you?

A. Well, there was Morgan and Lieutenant Nester, Sergeant Hutchison and the other officer. I couldn't recall [fol. 299] his name.

Q. And did they have your handcuffed to Morgan?

A. Yes, they did.

Q. And then, when they got you out to the Oak Park police station, where did they put you?

A. Well, I sat up in front, upstairs.

Q. You sat up front, upstairs?

A. Yes.

Q. Where did they put Morgan, do you know?

A. He sat with me until they got ready to talk to us.

Q. Did they take you out first to talk to you?

A. Yes. I think so.

Q. Did they handcuff Morgan to the chair?

A. I couldn't say, I don't know. I wasn't there.

Q. But they did take the handcuffs off of you?

A. They had to for me to go with them.

Q. I say, they did?

A. Yes.

Q. Where did they take you to talk to you?

A. They took me into the Lieutenant's office.

Q. Lieutenant Nesfer. Did they sit you down in there and ask you some questions?

A. Why, yes.

Q. Who talked to you?

[fol. 300] A. Lieutenant Nester.

Q. And nobody, you say, at that time or at any other time while you were in custody laid a hand on you?

A. That's right.
Q. Didn't touch you?
A. That's right.
Q. You remember you're under oath.
A. I know that.
Q. And you're telling the truth, the absolute truth?
A. Yes.
Q. And after they got through talking to you, where did you go?
A. Downstairs to a cell.
Q. Did they let you go home?
A. Of course not.
Q. Of course not?
A. No.
Q. How long did they keep you in there?
A. I stayed at Oak Park three or four days, and I stayed at the County Jail ten or twelve or fifteen days, something like that.
Q. Did they ever take you before a Justice of the Peace?
A. A judge?
Q. Yes, a judge, anywhere?
A. Yes, they did.
[fol. 301] Q. At no time during this whole tenure, that is, during the time that you left,—you were arrested at 42nd and Ellis—did anybody, any police officer, touch you; that is, lay a hand on you?
A. No.
Q. Did you sign any statement for these police officers?
A. Yes, I did make a statement when I was in Oak Park.
Q. And when was that?
A. I don't know about the days now. I don't know the dates.
Q. How long after you had been taken over there?
A. That night, I think. That night or morning after we got to Oak Park.
Q. That night or morning?
A. Yes.
Q. Did you sign this statement that you made free and voluntariiy?
A. Yes, I did.
Q. Who did you turn that statement over to?
A. Lieutenant Nester.
Q. Lieutenant Nester?

A. Yes, sir.

Q. Did they promise you any reward, or anything, for signing this statement?

Mr. Brown: Object as being immaterial, Your Honor.

[fol. 302] The Witness:

A. Of course not.

Mr. Geter:

Q. What?

A. No.

Q. It doesn't irritate you to answer, does it?

A. No, it doesn't.

Q. And everything that you did, in regard to making your statement at the Oak Park station, was because you did it free and voluntarily? Lieutenant Nester asked you some questions and you said, "All right, I want to make a statement"?

A. I answered to the best of my ability.

Q. The best of your ability?

A. Yes.

Q. Has anybody promised you anything for testifying out here?

A. No.

Q. You are just doing it because you are doing your civic duty, is that right?

A. I had a subpoena and I had to appear otherwise I wouldn't have been here.

Q. Did you see Morgan after Lieutenant Nester talked to you? Did you see Morgan after that?

A. You mean the first night after I was in Oak Park?

Q. Did you see him anytime after you left him to go into this room to talk to Lieutenant Nester?

[fol. 303] A. Well, yes, I saw him.

Q. Did you notice any marks or bruises about Morgan?

A. No, I couldn't say I did.

Q. Well, did you?

A. No, not as I know of. I didn't notice him that closely.

Q. You didn't notice him?

A. No.

Q. Were you close enough to see any?

A. If they were visible I would have probably saw them.

Q. I was going to say, if he had marks or bruises about him, were you close enough to see them?

A. Yes, I was.

Q. Where was that?

A. I went down first downstairs and he came down after I did in the cell.

Q. They brought him down after they brought you?

A. Yes, that's right.

Q. Did you have any conversation with Morgan down there after they brought him down?

A. No, we didn't say much.

Q. You know a man by the name of Sidney Barr, don't you?

[fol. 304] A. He owns the Barr Jewelry Store, doesn't he?

Q. You know a man by that name, don't you?

A. Yes. I heard his name mentioned.

Q. Didn't Sidney Barr approach you, when you were brought into the station, and say you were the man that tied him up?

A. Yes, he did.

Q. You say, "Yes"?

A. Yes, he did.

Mr. Brown: Object as being immaterial and ask that the answer be stricken, Your Honor. It has nothing to do with this hearing at all.

The Court: The motion is denied.

Mr. Brown: Your Honor, I would like to be heard on that.

The Court: I believe you asked him about questions that were asked him in the Oak Park Police Department.

Mr. Brown: I asked him if any police officer struck him at any time. That's all this hearing is.

The Court: Then you asked him if he had a conversation with the police.

Mr. Brown: I asked him if he had a conversation with the police concerning jewelry, and I wasn't interested in what it was; just merely to identify this as being the [fol. 305] proper party.

Now, the only hearing here, Your Honor, is to determine whether or not Morgan was struck by the police or whether this man was struck in the presence of Morgan or in a room next to him where he could hear him screaming and yelling,

as he testified. That is the only hearing before this court, not some collateral issue.

The Court: I could see where it might affect his credibility, whether or not he was identified in the case.

Mr. Geter: Absolutely.

Mr. Brown: It is going to test this man's credibility, Your Honor, whether somebody else identified him? How could that possibly test this man's credibility or affect this man's credibility in any way?

Mr. Geter: It might affect the answers that he made, that's all I can say. It will affect the answers that he has made or is going to make.

The Court: I could see where it would.

Mr. Brown: All right.

Mr. Geter:

Q. Did you hear anybody making any noises or outcries, as though they were being beaten or struck, while you were in the Oak Park police station?

[fol. 306] A. No.

Q. I didn't understand that.

A. No.

Q. Everything was peaceful and quiet around there, isn't that right?

A. Yes, as far as I know.

Q. About how many police officers were around there, Mr. Anderson, during the time you were at Oak Park?

A. I couldn't say that. After all, it's a police station and they continued to come in and out.

Q. Well, how many people were around when you were being questioned?

A. Oh, three or four or five, something like that.

Q. Three or four or five?

A. Yes.

Q. Of course, you were talking to Lieutenant Nester?

A. I don't mean that these people were in the room, but they were around there. Like some sergeant—I don't know his name—Sergeant Hutchison and another fellow.

Q. Were any of these officers close enough to hear what was said to you at any time, outside of Lieutenant Nester who was asking you these questions?

A. Well, yes.

[fol. 307] Q. Who?

A. Sergeant Hutchison's partner. I don't know his name.
Q. Piotter?
A. Piotter. He was present there.
Q. And, you say, you made a statement. Who typed out this statement for you?
A. I don't recall.
Q. You don't recall the officer?
A. No, I don't.
Q. You were present answering questions, weren't you?
A. Yes, sir. I can't think who it was. I don't remember that.
Q. You can't remember who typed it?
A. No, I don't. I think it was Sergeant Hutchison who typed it.

Mr. Geter: I think that's all.
Mr. Brown: That's all.

(Witness excused.)

[fol. 308] Reporter's Certificate to foregoing omitted in printing.

[fols. 309-309a] IN THE CRIMINAL COURT OF COOK COUNTY

P. G. 61

TALBERT JENNINGS, Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS, Respondent

MOTION TO STRIKE

Now comes the respondent, People of the State of Illinois, by John S. Boyle, State's Attorney of Cook County, Illinois, and respectfully moves the Court to strike the second amended petition filed herein and to dismiss the proceeding for the following reasons:

1. Petitioner is barred from obtaining relief on the grounds alleged in his petition for the reason that the claims were conclusively adjudicated in full hearing to petitioner and decided against him, the claims therefore being res judicata and not within the jurisdiction of the

Court to hear or to use as a basis for granting petitioner relief.

2. The allegations of a denial of petitioner's constitutional rights are mere conclusions, unaccompanied by affidavit of facts or documentary evidence having possible probative force sufficient to require an answer or hearing on any issue of denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

3. The facts alleged by petitioner would not, if true, constitute a showing of a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

Wherefore, respondent prays judgment that the petition as amended be stricken and the proceeding be dismissed, or, in the alternative, for time to answer.

People of the State of Illinois, John S. Boyle, State's Attorney of Cook County. Charles W. Corcoran, Assistant State's Attorney.

[fol. 310] In Criminal Court of Cook County

[Caption omitted]

Order Dismissing Petition—November 1, 1950

This day come the said Petitioner by his Counsel and the said Respondent by his Counsel also comes.

And the Court hearing Counsel in support of the Respondent's Motion to Dismiss the 2nd Amended Petition, heretofore entered herein, as well as in opposition thereto and being fully advised in the premises doth sustain said Petition and orders that said Petition be and the same is hereby sustained accordingly.

Petition dismissed.

Petitioner to stand on 2nd Amended Petition.

[fol. 311] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 312] WRIT OF COURT, CRIMINAL COURT OF COOK COUNTY

[Title omitted]

PRAECIPE FOR RECORD

To: Honorable Vincent J. Polacki, Clerk. Criminal Court of Cook County, Chicago, Illinois:

The Plaintiff In Error hereby direct that you prepare the following parts of the record in the above entitled cause PC No. 61 in connection with his writ of error to the Illinois Supreme Court:

(1) The Petition as Amended and filed on September 20th, 1950, with all supporting documents, as filed in the Criminal Court of Cook County and Marked Exhibits "A", "B", "C", "D", "E", "F", "G", "H"; Supplementary Exhibits #1 (part one, two and three); Supplementary Exhibit #2 (parts one and two); Supplementary Exhibit #3.

(2) The Motion to strike said petition filed by the People of the State of Illinois.

(3) The Order of the Court in dismissing the said petition.

(4) The Praecipe For Record and proof of service.

Please take notice that the Plaintiff In Error elects, under Rule 36 (2), of the Illinois Supreme Court to transmit the record to that Court and will, under the provision of the Illinois Revised Statutes, 1949, Ch. 53, Par. 81, present to you full and complete copies of the aforesaid papers for certification, and will therefore ask for the return of same.

Talbot Jennings, Plaintiff In Error, Pro se.

[fol. 313] Proof of service of praecipe omitted in printing.

[fol. 314] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 315] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

CERTIFICATE OF CORRECTNESS

Be it remembered, that heretofore, to-wit, on the First day of November of the October Term, A. D. 1950, being one day of said Court, before the Honorable Alan E. Asheraft, Jr., sitting as one of the Judges of the said Court, this cause came on for hearing upon the amended petition for redress of alleged infractions of constitutional rights, occurring during the course of trial in People of the State of Illinois vs. Arthur Smith, Jr., et al., General number 48-1247, brought in forma pauperis, under chapter 38, paragraphs 826-832, Illinois Revised Statutes, 1949, Post Conviction Number 61, and that upon said hearing the Motion To Strike the above said amended petition and supporting documents made by the People of the State of Illinois was sustained and an Order was entered by the Court Dismissing the aforesaid amended petition.

Forasmuch as the foregoing matter, as certified by the Clerk of the Criminal Court of Cook County, do not properly appear of record herein, the petitioner-defendant tenders this Certificate of Correctness to the presiding Judge of said Criminal Court of Cook County, and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided.

[fol. 316] It is therefore hereby Certified by the undersigned, Judge of the Criminal Court of Cook County, that the foregoing is a true and correct transcript of the records on file offered at the hearing of the said cause; the ruling of the Court with respect to said amended petition; and a correct stenographic report of certain portions of the proceedings taken at the Trial of said case (People of the State of Illinois vs. Arthur Smith, Jr., et al., General Number 48-1247) and submitted as Exhibits in support of said amended petition and by reference made a part thereof.

All of which petitioner-defendant desires to have reviewed by writ of error.

Dated this 22nd day of January, A. D. 1951.

Alan E. Asheraft, Jr., Judge of the Criminal Court of Cook County, Illinois.

[fol. 317] IN SUPREME COURT OF ILLINOIS

[Caption omitted]

Post Conviction Hearing Act, Criminal Court Cook County

No. 1122

PEOPLE STATE OF ILLINOIS, Defendant in Error

vs.

TALBOT JENNINGS, Plaintiff in Error

ORDER DISMISSING PETITION FOR WRIT OF ERROR—March 23, 1951

And now, on this day, the Court having duly considered the motion for leave to file a writ of error under the Post Conviction Hearing Act as a poor person and for leave to file ten typewritten copies of abstract and brief, and being now fully advised of and concerning the premises; doth allow the motion to sue as a poor person. It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition and record, if requested.

[fol. 318] Clerk's Certificate to foregoing record omitted in printing.

[fol. 319] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 452, Misc.

ORDER—June 4, 1951

On Petition for writ of Certiorari to the Supreme Court of the State of Illinois.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 782, now No. 95, October Term, 1951. The case is placed on the summary docket.

It is further ordered that the duly certified copy of the transcript of the proceedings below shall be treated as though filed in response to such writ.

June 4, 1951.

No. 95

No. 95

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 95

TALBOT JENNINGS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR PETITIONER

NATHANIEL L. NATHANSON,
Counsel for Petitioner;
CALVIN P. SAWYIER,
Associate Counsel for Petitioner.

INDEX

Subject Index

	Page
Opinion below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	2
Summary of argument	7
Argument	9
I. The Illinois Supreme Court erred in holding that the allegations of the petition with respect to the use of coerced confessions did not, as a matter of federal law, set forth a substantial claim of denial of federal right entitling petitioner to a hearing on the truth of the allegations	9
A. The order of the Illinois Supreme Court can be sustained only if, as a matter of federal law, the principle of res judicata justified the denial of a hearing on the truth of the petitioner's allegations with respect to the coerced confessions	9
B. The determination of the issue of coercion at the original trial did not, under federal law, justify the application of the doctrine of res judicata in the absence of a real opportunity for direct review by this Court of the determination in the original trial	13
C. The failure of the State of Illinois to provide any method by which petitioner could obtain, without cost to himself, a transcript of the testimony at the original trial was an	

Page

effective deterrent to appeal sufficient to render the doctrine of res judicata inapplicable 20

II. The Illinois Supreme Court erred in holding that petitioner was not entitled to a hearing on the truth of his specific and substantiated allegations that the prosecuting officials by knowing use of perjured testimony denied him due process of law 29

Conclusion 38

Appendix A. Illinois Post-Conviction Hearing Act 39

Appendix B. State Statutory Provisions on Cost of Transcript 41

CITATIONS

Cases Cited:

Adams v. *United States ex rel. McCann*, 317 U. S. 269, 274-275, 279 14, 26, 36

Ashcraft v. *Tennessee*, 322 U. S. 143 10

Bowen v. *Johnston*, 306 U. S. 19, 24, 26-27 14, 15, 17

Brown v. *Johnston*, 126 F. 2d 727 31

Brown v. *Mississippi*, 297 U. S. 278, 286 9, 15

Burall v. *Johnson*, 134 F. 2d 614 18

Canty v. *Alabama*, 309 U. S. 629 10

Carter v. *Illinois*, 329 U. S. 173, 179 22

Cash v. *Huff*, 142 F. 2d 60 18

Chambers v. *Florida*, 309 U. S. 227, 238 10, 16, 26

Chambers v. *State*, 111 Fla. 707 16

Cochran v. *Kansas*, 316 U. S. 255, 256-257 10

Counselman v. *Hitchcock*, 142 U. S. 547 14

Cromwell v. *County of Sac*, 94 U. S. 351 36

Darr v. *Burford*, 339 U. S. 200, 206 19

Eury v. *Huff*, 146 F. 2d 17 18

Foster v. *Illinois*, 332 U. S. 134, 139 22

Frank v. *Mangum*, 237 U. S. 309, 334, 348 13, 14

Haley v. *Ohio*, 332 U. S. 596 10

Harris v. *South Carolina*, 338 U. S. 68 10

Hawk v. *Olson*, 326 U. S. 271, 278-279 10

House v. *Mayo*, 324 U. S. 42, 45 10

Hysler v. *Florida*, 315 U. S. 411, 421 30

Page
Johnson v. *Zerbst*, 304 U. S. 458, 468 10, 14
Lisenba v. *California*, 314 U. S. 219, 237 10, 15
Lyons v. *Oklahoma*, 322 U. S. 596 10
Malinski v. *New York*, 324 U. S. 401 10
Markuson v. *Boucher*, 175 U. S. 184, 185, 186 23, 24
Miller v. *Hiatt*, 141 F. 2d 691 18
Mooney v. *Holahon*, 294 U. S. 103 14, 30, 35
Moore v. *Dempsey*, 261 U. S. 86, 92, 102 10, 14, 15, 16
Nielsen, Hans, Petitioner, 131 U. S. 176 14
People v. *Castree*, 311 Ill. 392, 397-398 35, 37
People v. *Dale*, 406 Ill. 238, 244 11
People v. *Farley*, 408 Ill. 288 11
People v. *Hartman*, 408 Ill. 133 11
Potter v. *Dowd*, 146 F. 2d 244, 247 26
Price v. *Johnston*, 334 U. S. 266, 271, 288 31
Pyle v. *Kansas*, 217 U. S. 213 14, 30, 35
Russell v. *Place*, 94 U. S. 606 36
Salinger v. *Loisel*, 265 U. S. 224, 231 19
Schectman v. *Foster*, 172 F. 2d 339, 341 30
Schramm v. *Brady*, 129 F. 2d 108 18
Sharpe v. *Commonwealth of Kentucky*, 135 F. 2d 974 18
Sharpe v. *Commonwealth of Kentucky*, 142 F. 2d 213 18, 31
Sharpe, Ex Parte, 36 F. Supp. 386, 388 25
Smith v. *O'Grady*, 312 U. S. 329 14
Smith v. *United States*, 187 F. 2d 192 17, 18, 26
Snow, In re, 120 U. S. 274 14
State ex rel. McManemon v. *Blackford Circuit Court*, 95 N. E. 2d 556 28
Steele v. *Louisville and Nashville R. R.*, 323 U. S. 192, 197 12
Stonefield, Ex Parte, 36 F. Supp. 453, 456 25
Sunal v. *Large*, 332 U. S. 174, 177, 182 15, 18, 37
Tilghman v. *Hunter*, 167 F. 2d 661 31
Turner v. *Pennsylvania*, 338 U. S. 62 10
United States ex rel. Kennedy v. *Tyler*, 269 U. S. 13, 19 23, 24, 25
United States ex rel. Rheim v. *Foster*, 175 F. 2d 772, 773 25

	Page
United States v. *Ragen*, 158 F. 2d 346	31
Vernon v. *Alabama*, 313 U. S. 547	10
Waley v. *Johnston*, 316 U. S. 101	14
Walker v. *Johnston*, 312 U. S. 275, 285	10, 14
Ward v. *Texas*, 316 U. S. 547	10
Watts v. *Indiana*, 338 U. S. 49	10
White v. *Texas*, 309 U. S. 631	10
White v. *Texas*, 310 U. S. 530	10
Williams v. *Kaiser*, 323 U. S. 471, 473-474, 479	10, 28
Wolf v. *Colorado*, 338 U. S. 25	35
Young v. *Ragen*, 337 U. S. 235	28

STATUTES

Ill. Rev. Stats. 1949, ch. 37, sec. 163	20
Ill. Rev. Stats. 1949, ch. 38, sec. 747	21
Ill. Rev. Stats. 1949, ch. 38, sec. 769 (a)	20, 23
Ill. Rev. Stats. 1949, ch. 38, sec. 826-832	2
Ill. Rev. Stats. 1949, ch. 110, sec. 259.28	21
Ill. Rev. Stats. 1949, ch. 110, sec. 259.34 (1) (a)	21
Ill. Rev. Stats. 1949, ch. 110, sec. 259.70A	21
Smith-Hurd Ill. Ann. Stats. 1935, ch. 110, sec. 259.70A	21
Smith-Hurd Ill. Ann. Stats., ch. 38, sec. 826-832 (1950 Supp.)	2
28 U.S.C.A. 1915, 63 Stat. 104	22
The Criminal Appeal Act 1907, 7 Edw. VII, ch. 23, sec. 16	23

TREATISES AND ARTICLES

American Law Institute Code of Criminal Procedure (1931), § 447; pp. 1266-1273	23
Jenner, The Illinois Post-Conviction Hearing Act, 9 F.R.D. 347	28

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 95

TALBOT JENNINGS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR PETITIONER

Opinion Below

The Supreme Court of Illinois did not render any opinion, apart from the Order Dismissing Petition for Writ of Error, which is set forth in full at page 184 of the Record. The order reads in part as follows: "It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the Constitution of the United States or of the Constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also,

petitioner granted leave to withdraw petition and record, if requested."

Jurisdiction

The judgment of the Supreme Court of Illinois was entered March 23, 1951. (R. 184.) The petition for writ of certiorari was filed April 9, 1951 and was granted June 4, 1951. The jurisdiction of this Court rests on 28 U.S.C. Section 1257 (3).

Questions Presented

The broad question presented is whether the Illinois Supreme Court erred in holding that there was "no violation or denial of any substantial constitutional rights of the petitioner under the Constitution of the United States" resulting from the dismissal, without a hearing on the truth of the allegations, of a petition under the Illinois Post-Conviction Hearing Act which alleged (1) that petioner's coerced confession had been introduced in evidence at his trial and (2) that perjured testimony had been knowingly used by the prosecuting officials to aid in securing a conviction. Subsidiary questions are (1) whether adjudication of the claim of coerced confession at the original trial made the issues res judicata in the post-conviction proceedings and (2) whether failure to present the claim of perjury at the original trial constituted a waiver of that claim.

Statute Involved

The Illinois Post-Conviction Hearing Act (Ill. Rev. Stats., 1949, chap. 38, secs. 826-832, Smith-Hurd Illinois Annotated Statutes, chap. 38, secs. 826-832) is set forth in full in Appendix A.

Statement

On February 5, 1951, Talbot H. Jennings, the petitioner herein, filed *pro se*, in the Criminal Court of Cook County

an amended petition under the Illinois Post Conviction Hearing Act. (R. 7). According to the allegations of the petition, five police officers at 3:30 a. m. on June 6, 1948, acting without search or arrest warrants forced their way into the home of Mrs. Rosanna Watson and Miss Evelyn Jackson, at 5303 South Dearborn Street, Chicago, and arrested the petitioner. (R. 9). The officers then searched the house and when requested to show a search warrant, one of them replied that they did not need one. One of the officers searched petitioner's person and took from him a diamond ring and a wristwatch. When petitioner asked Mrs. Watson to obtain counsel for him, the petitioner was struck in the face by one of the arresting officers who said that notifying an attorney would do no good. (R. 9). The petitioner was then taken in a police car, after brief stops at two Chicago police stations, to the Oak Park Police Station in Oak Park, Illinois and was questioned on the way about a jewelry store robbery that had occurred in Oak Park on May 23, 1948. Upon arrival at the police station at about 5:30 a.m., June 6, 1948, petitioner was informed that he was arrested on suspicion of having participated in that robbery. (R. 9). When the petitioner denied any knowledge of the crime and attempted to produce evidence that he was in the City of Detroit at the time of the robbery one of the officers conducting the interrogation struck the petitioner in the face a number of times saying that he would make the petitioner confess to the robbery or kill him. (R. 9). Petitioner was then subjected to continuous questioning for several hours and was beaten when he continued to assert his innocence. (R. 9). The questioning and beating were temporarily suspended when a man, later identified as Mr. Sidney Barr, the owner of the jewelry store, was brought in to identify the petitioner. Mr. Barr first said that he could not identify the petitioner because he did not get a good look at the man who robbed him but

finally, under urging by a police officer, said that the petitioner, from the back, looked like the man who was in his store at the time that another man, referred to as Edgar Morgan, put a gun in his stomach and forced him to the rear of the store. (R. 12). The petitioner was then confronted with Edgar Morgan, who identified the petitioner as the man he had implicated in a statement made at the Oak Park Police Station. Morgan was then taken away and petitioner was again beaten and questioned continuously until he could no longer stand the abuse inflicted upon him by the police officers. Petitioner then agreed to sign anything the officers wanted him to sign to evade further mistreatment, and signed the statement that Morgan had made implicating him. (R. 13). After signing this statement the petitioner was taken to the River Forest Police Station, River Forest, Illinois and was kept there for two days and was brought back and forth to the Oak Park Police Station for further questioning and maltreatment. (R. 13). As the result of this interrogation and physical brutality the petitioner was in a dazed condition and suffering with pain from the injuries inflicted. He was not given any food or water until he signed a second joint statement in the Oak Park Police Station on the night of June 6, 1948. (R. 14). The petitioner was then returned to the River Forest Police Station where he was kept in secret detention until June 8, 1948, when he was brought back to the Oak Park Station and informed that an attorney had been retained to act in his behalf and that the attorney had instituted habeas corpus proceedings to have him located and released or a charge placed against him. (R. 14). A charge of armed robbery was then placed against the petitioner and he was locked up and held in the Oak Park lockup. Several days after his arrest petitioner was taken before a justice of the peace and was committed to the Cook County jail to await action by the Grand Jury. (R. 14-15).

On June 29, 1948, the Grand Jury returned an indictment against petitioner for robbery, (R. 27) and on July 6, 1948, the petitioner pleaded "Not Guilty." (R. 32). On the same day the case was continued until July 28. (R. 32-33). On July 28th, by agreement between the State's Attorney and petitioner's counsel, the cause was continued until August 13th. (R. 33). On August 13th the counsel for the petitioner submitted a motion to suppress evidence obtained by illegal search of the petitioner's person and of the premises at which petitioner was arrested. (R. 33). The evidence was described as "one gold ring and certain personal property, the exact description of which is unknown to the petitioner and which the said police officers intended to use in the above entitled cause as evidence against the petitioner." (R. 33). At the hearing for the motion to suppress, Detective Piotter, one of the officers making the arrest, testified that petitioner had been arrested in an apartment at 5303 Dearborn and that the arresting officers had gotten no personal property in the apartment when petitioner was arrested. (R. 60-61). On August 26, 1948, the Court overruled the motion to suppress evidence. (R. 33-35). After successive continuances, granted at the request of the State's Attorney on October 4, 1948 and November 4, 1948, and the overruling of a motion for discharge of the petitioner on account of the delay, the case was called for trial on December 23, 1948. (R. 35-36).

At the trial the prosecution offered in evidence both statements signed by the petitioner. Counsel for petitioner moved to suppress the statements on the ground that they had been obtained by third degree methods. At the hearing of this motion the petitioner testified, and also produced witnesses who testified, to the police brutality in extracting the confessions. Police officers testified to the contrary. The presiding judge overruled the motion and admitted the statements in evidence. (R. 15-16, 165-180).

At the trial evidence was also introduced by the prosecution with respect to a ring found upon the petitioner and identified by Mr. Barr as part of the jewelry stolen from his store. The same police officer, Detective Piotter, who had testified at the hearing on the motion to suppress evidence that no personal property was taken when the petitioner was arrested, testified at the trial that the ring was taken in the apartment from the petitioner when he was arrested. (R. 85; 118-119).

On January 12, 1949 the jury returned a verdict of "guilty", (R. 40) and on January 28, 1948 the petitioner was sentenced for a term of from ten (10) to twenty-five (25) years, which he is now serving. (R. 44). On the same day, motions for new trial and in arrest of judgment were presented and overruled. (R. 4-43).

In response to the petition under the Post-Conviction Act set forth above, the State's Attorney on behalf of the State of Illinois moved to strike the second amended petition and to dismiss the proceeding. The grounds advanced for this motion were: (1) that "the claims were conclusively adjudicated in full hearing to petitioner and decided against him, the claims therefore being res judicata and not within the jurisdiction of the court to hear or use as a basis for granting petitioner relief;" (2) that "the allegations of a denial of petitioner's constitutional rights are mere conclusions unaccompanied by affidavit of facts or documentary evidence having possible probative force sufficient to require an answer or hearing;" (3) that "the facts alleged by petitioner would not, if true, constitute a showing of a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his conviction." (R. 180-181).

On November 1, 1950, the Court, after hearing argument on the motion to dismiss, entered an order dismissing the

petition. (R. 18). On February 5, 1951, the petitioner filed a Petition for Writ of Error in the Supreme Court of Illinois accompanied by motion for leave, because of poverty, to file typewritten copies of brief and abstract in lieu of the requisite number of printed copies required by Rule 40 of that court. (R. 1-6). On March 23, 1951, the Supreme Court of Illinois issued an order allowing the petitioner's motion to sue as a poor person and dismissing the Petition for Writ of Error. (R. 184).

Summary of Argument

1. The petition presented so clear and substantial a claim of denial of due process through use of coerced confessions that the order of the Illinois Supreme Court must have been intended as a holding that such a claim could not be presented in the post-conviction proceedings. Since, however, the decision avowedly rests on federal rather than state law, it can be supported only on the theory that as a matter of federal law such a claim could not be presented in a collateral attack upon an adjudication made at the original trial. This ground of decision, if it can be treated as a matter of federal law at all, must be tested by consideration of the right to present in federal habeas corpus proceedings claims of denial of constitutional right which have been determined at the original trial. The decisions of this Court show that there is no absolute bar to the readjudication of such claims in habeas corpus proceedings, and also support the proposition that such readjudication is appropriate whenever there was no adequate opportunity to secure direct review of the determination of constitutional right in the original trial. It is particularly important that such collateral attack be permitted in the case of state court determinations when there is no opportunity for direct review, since, otherwise, there would be no way to secure federal vindica-

tion of the federal rights asserted. This petitioner did not have an adequate opportunity for direct review with respect to his claim of coerced confession because a transcript of the evidence at the trial would have been required in order to present it by way of writ of error, and Illinois does not provide any way in which an indigent defendant, such as this petitioner, may obtain the transcript without cost to himself. Consequently, the claim of denial of constitutional right through use of coerced confessions would have been available to petitioner in federal habeas corpus proceedings, if there were no Illinois post-conviction remedies available. Since the Illinois Supreme Court apparently assumed as the basis for its decision that such a claim of federal right would not have been available in federal habeas corpus proceedings, its order should be reversed with directions to grant a hearing on the merits of the allegation in the post-conviction proceedings, unless such a hearing is unavailable as a matter of state rather than federal law.

2. The petition also presented a clear and substantial claim of denial of due process through the knowing use by the prosecuting officials of perjured testimony which contributed substantially to petitioner's conviction. This perjury occurred on petitioner's motion to suppress illegally seized evidence, when one of the arresting officers testified that no property had been taken from the petitioner at the time of the arrest. On the basis of this testimony the State's Attorney secured a denial of the motion to suppress without any consideration of its merits. Yet the same State's Attorney at the time of the trial presented as one of the State's exhibits a ring which the same police officer then testified had been taken from petitioner at the time of his arrest. Thus, the State's Attorney and the police officer by the knowing use of perjured testimony deliberately deprived the petitioner of an opportunity to se-

cure the benefit of state law, which provides for the suppression of illegally obtained evidence. Such dishonest conduct on the part of the prosecuting officials, which contributed materially to petitioner's conviction, was a denial of due process within the applicable rulings of this Court. This claim of denial of due process has never been litigated before or presented to any court for adjudication. The failure of the petitioner to present this claim of denial of due process at the time of the original trial can not reasonably be construed as a waiver, and there is no indication that it was so construed by the Illinois Supreme Court.

ARGUMENT

I. The Illinois Supreme Court erred in holding that the allegations of the petition with respect to the use of coerced confessions did not, as a matter of federal law, set forth a substantial claim of denial of federal right entitling petitioner to a hearing on the truth of the allegations.

A. *The order of the Illinois Supreme Court can be sustained only if, as a matter of federal law, the principle of res judicata justified the denial of a hearing on the truth of the petitioner's allegations with respect to the coerced confessions.*

The original petition in this proceeding makes clear and specific allegations with respect to the extraction and use of involuntary confessions for the purpose of obtaining a conviction. These allegations are also supported by two affidavits by friends of the petitioner to the effect that they visited him shortly after his detention and saw evidences of the brutality to which he had been subjected. (R. 63-64). There can be no doubt that there is thus presented a substantial claim of denial of federal right within the applicable rulings of this Court. *Brown* v. *Mississippi*, 297 U. S. 278;

Chambers v. *Florida*, 309 U. S. 227; *White* v. *Texas*, 309 U. S. 631; *Canty* v. *Alabama*, 309 U. S. 629; *White* v. *Texas*, 310 U. S. 530; *Vernon* v. *Alabama*, 313 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219; *Ward* v. *Texas*, 316 U. S. 547; *Ashcraft* v. *Tennessee*, 322 U. S. 143; *Lyons* v. *Oklahoma*, 322 U. S. 596; *Malinski* v. *New York*, 324 U. S. 401; *Haley* v. *Ohio*, 332 U. S. 596; *Watts* v. *Indiana*, 338 U. S. 49; *Turner* v. *Pennsylvania*, 338 U. S. 62; *Harris* v. *South Carolina*, 338 U. S. 68. As against the motion to dismiss interposed by the State's Attorney, these allegations were entitled to acceptance at their face value. *Hawk* v. *Olson*, 326 U. S. 271, 278-279; *House* v. *Mayo*, 324 U. S. 42, 45; *Williams* v. *Kaiser*, 323 U. S. 471, 473-4; *Cochran* v. *Kansas*, 316 U. S. 255, 256-7; *Walker* v. *Johnston*, 312 U. S. 275, 285; *Johnson* v. *Zerbst*, 304 U. S. 458, 468; *Moore* v. *Dempsey*, 261 U. S. 86, 92. This claim of denial of due process through the use of coerced confessions was fully preserved in the petition for writ of error to the Illinois Supreme Court, in which petitioner alleged that confessions obtained by force, violence and illegal detention were used to obtain his conviction and that "his constitutional rights were violated under Art. 11, secs. 2, 6, 9, and 10 of the Illinois Constitution and under the 4th, 5th, 6th and 14th Amendments of the United States Constitution." (R. 3). In view of these allegations, it is apparent that the petitioner set forth substantial claims of the denial of federal right with respect to the use of coerced confessions and that the Illinois Supreme Court in dismissing the petition for writ of error on the ground that it found "no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States" denied the validity of that federal claim.

The allegations of the petition with respect to the coerced confessions present so clear a case of a substantial claim of denial of due process that it is scarcely conceivable that

the Illinois Supreme Court meant that these allegations, taken by themselves, did not state a substantial claim of federal right. The more reasonable interpretation of the court's ruling is that those allegations, in the light of the fact that the same claim had been made at the original trial and decided against the petitioner, did not as a matter of constitutional right entitle the petitioner to another hearing upon the same issue. This analysis is consistent with the ground urged by the State's Attorney in his motion to dismiss, namely that the issue presented was res judicata (R. 180) and with the statement of the Attorney General in response to the petition for certiorari that the petition did not demonstrate that the questions presented "were not fairly tried and therefore conclusively adjudicated at his trial." It is also consistent with the opinion of the Illinois Supreme Court in *People* v. *Dale*, 406 Ill. 238, sustaining the validity of the post-conviction statute, in which the court said: "The remedy provided for under the Act cannot be employed to obtain another hearing upon claims of denial of constitutional rights as to which a full and final hearing on the merits has already been held". (406 Ill. at 244).[1]

It is true that the opinion of the Illinois Supreme Court in the *Dale* case also indicates that, irrespective of federal law, Illinois law might prevent the reconsideration in post-conviction proceedings of constitutional issues presented in the original trial. However, it is clear from the language of the order that the ruling of the Illinois Supreme Court in the present case in rejecting the claims of federal right, put aside the considerations of state law suggested in the *Dale* opinion which might have served as the grounds of decision and rested instead on its own conception of federal law. It is, therefore, immaterial that the ruling might have

[1] Other opinions of the Illinois Supreme Court under the Post-Conviction Hearing Act are *People* v. *Hartman*, 408 Ill. 183; and *People* v. *Farley*, 408 Ill. 288.

been rested upon state law had the Illinois court chosen such grounds. See *Steele* v. *Louisville and Nashville R. R.*, 323 U. S. 192, 197 n. 1. Thus it seems fair to assume, for the purposes of this discussion, that the ruling of the Illinois Supreme Court rests upon the proposition that, as a matter of federal law, the determination in the original trial that the confession was properly admissible, renders that question res judicata for the purpose of any other proceedings attacking the conviction as one obtained without due process of law. If there is any doubt about the correctness of this assumption, the petitioner is at the very least entitled to a reversal of the judgment below with directions to clarify the basis of decision.

If, however, our interpretation of the Illinois Supreme Court's ruling is correct, the judgment can be sustained only if dismissal of a federal habeas corpus proceedings would have been justified had the same claim of denial of federal right been presented in such proceedings in the absence of any available state remedies. For either (1) the concept of res judicata, where applied by a state court to foreclose a constitutional issue, must be treated entirely as a matter of state law, or (2) it must be governed by the same principles which are controlling in federal courts with respect to comparable problems. If the first alternative is correct, it would follow almost automatically that the ruling of the Illinois Supreme Court would have to be reversed, because it avowedly rests upon federal rather than state law, and there is no principle of federal law, other than some concept of res judicata, which could conceivably support the judgment. If, on the other hand, the second alternative is correct, the soundness of the Illinois Supreme Court's decision must be tested by the extent to which the principle of res judicata has been applied to the presentation of comparable claims of denial of federal right in federal habeas corpus or other post-conviction proceedings. We turn therefore

to an examination of the application of the principle of res judicata in such proceedings.

B. *The determination of the issue of coercion at the original trial did not, under federal law, justify the application of the doctrine of res judicata in the absence of a real opportunity for direct review by this Court of the determination in the original trial.*

Examination of the decisions of this Court regarding federal habeas corpus proceedings suggests immediately that there is in federal law no hard and fast rule justifying the application of the principle of res judicata to foreclose consideration on their merits of constitutional claims of deprivation of liberty without due process of law. Indeed, if there is any general rule to be deduced from the decisions, it points in exactly the opposite direction. Without going so far as to suggest that a prior determination on the particular issue in the original proceedings may not be a relevant or significant factor, it may at least confidently be asserted that its significance may be qualified or entirely neutralized by other relevant circumstances making opportunity for collateral attack in the habeas corpus proceedings necessary or appropriate to the ends of justice.

For example, in *Frank* v. *Mangum*, 237 U. S. 309, the opinion of the Court rejected "the suggestion that even the questions of fact bearing upon the jurisdiction of the trial court could be conclusively determined against the prisoner by the decision of the state court of last resort." (p. 334). The dissenting opinion of Mr. Justice Holmes made the point all the more explicit when he said: "It is significant that the argument for the State does not go so far as to say that in no case would it be permissible on application for habeas corpus to overrule the findings of fact by state courts. It would indeed be a most serious thing

if this Court were so to hold, for we could not but regard it as a removal of what is perhaps the most important guaranty of the Federal Constitution." (p. 348). And in *Moore* v. *Dempsey*, 261 U. S. 86, the very grounds adopted by this Court in a habeas corpus proceeding as the basis for its finding of violation of due process had also been unsuccessfully pressed upon the trial court in a motion for a new trial, upon the State Supreme Court as grounds for appeal, and finally upon this Court in a petition for certiorari. Indeed the position taken by the dissent in *Moore* v. *Dempsey* was that the "solemn adjudications by courts of a great state" which this Court had refused to review, could not "be successfully impeached by mere ex parte affidavits made upon information and belief . . ." (p. 102).

It is true that in *Moore* v. *Dempsey* the constitutional claim was that the entire trial was a sham because of the spirit of mob domination that pervaded it. But that is not the only type of case in which this Court has permitted collateral attack to present an issue of denial of constitutional rights. Such attack has been permitted when the constitutional issue presented was double jeopardy (*In re Snow*, 120 U. S. 274; *Hans Nielsen, Petitioner*, 131 U. S. 176); self-incrimination (*Counselman* v. *Hitchcock*, 142 U. S. 547); denial of counsel (*Johnson* v. *Zerbst*, 304 U. S. 458; *Walker* v. *Johnston*, 312 U. S. 275); lack of jurisdiction over the subject matter (*Bowen* v. *Johnston*, 306 U. S. 19); use by prosecutor of testimony known to be perjured (*Mooney* v. *Holohan*, 294 U. S. 103; *Pyle* v. *Kansas*, 317 U. S. 213); inducing prisoner to plead guilty by means of misrepresentation (*Smith* v. *O'Grady*, 312 U. S. 329); inducing prisoner to plead guilty by means of coercion (*Waley* v. *Johnston*, 316 U. S. 101); suppression of testimony favorable to defendant (*Pyle* v. *Kansas*, 317 U. S. 213); deprivation of trial by jury (*Adams* v. *United States ex rel. Mc-*

Cann, 317 U. S. 269). In some of these cases the issue had already been adjudicated in the original proceedings and in others not, but the underlying principle of them all is as Chief Justice Hughes indicated in *Bowen* v. *Johnston*, *supra*, that "if it be found that the court had no jurisdiction to try the petitioner or that in its proceedings his constitutional rights have been denied, the remedy of habeas corpus is available . . . ." (306 U. S. at 24). And in *Sunal* v. *Large*, 332 U. S. 174, where the writ was denied on the ground that it could not do service for an appeal, the opinion of the Court was careful to distinguish the principle of the foregoing cases on the ground it was not applicable "where the error does not trench on any constitutional rights of defendants nor involve the jurisdiction of the trial court" and to point out that the error complained of did not rise to constitutional proportions because it did not "infect the trial with lack of procedural due process" (p. 182).

There is scarcely need to emphasize here the seriousness with which this Court has regarded the infection resulting from the use of a coerced confession as the means of obtaining a conviction. In *Brown* v. *Mississippi*, 297 U. S. 278, 286, Chief Justice Hughes, in sweeping aside the contention of the state that the objection had not properly been presented at the trial, said: "The complaint is not of the commission of mere error, but of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void." (Citing *Moore* v. *Dempsey*). Similarly in *Lisenba* v. *California*, 314 U. S. 219, Mr. Justice Roberts, speaking for this Court, said:

> "A trial dominated by mob violence in the courtroom is not such as due process demands. The case can stand no better if mob violence anterior to the trial is the inducing cause of the defendant's alleged confession.
>
> "If, by fraud, collusion, trickery, and subornation of perjury, on the part of those representing the State,

the trial of an accused person results in his conviction, he has been denied due process of law. The case can stand no better if, by the same devices, a confession is procured, and used in the trial.

"The concept of due process would void a trial in which, by threats or promises in the presence of court and jury, a defendant was induced to testify against himself. The case can stand no better if, by resort to the same means, the defendant is induced to confess and his confession is given in evidence". (p. 237)

Plainly under the views consistently expressed by this Court, the use of a coerced confession is as abhorrent to the fundamentals of due process and as fatal to the validity of the trial as the facts set forth in *Moore* v. *Dempsey*, or any other case where collateral attack has been permitted through habeas corpus proceedings in the federal courts. It is true that most of the coerced confession cases have come to this court by way of direct appeal rather than by way of habeas corpus or some other post-conviction remedy. However, that has not been uniformly so (cf. *Chambers* v. *Florida*, 309 U. S. 227) [2] and there is nothing in the opinions of this Court to suggest that in an appropriate case the same issue might not properly be presented collaterally in some form of post-conviction proceedings. Indeed, the very fact that this Court has set aside state convictions on the grounds that coerced confessions were admitted in evidence, even though that issue had been thoroughly and dispassionately considered by the state court, indicates that such admission is itself a denial of due process irrespective of the judicial temper pervading the trial.

One can only conclude, therefore, that the alleged use of

[2] The State Supreme Court in *Chambers* v. *State*, 111 Fla. 707, granted leave to apply for a writ of error coram nobis on the basis of allegations that the petitioners were too ignorant and frightened to tell their attorneys, or to testify, that their confessions were not voluntary.

a coerced confession to secure a conviction is a claim of denial of constitutional right for the vindication of which, in an appropriate case, the remedy of habeas corpus is as much available as for any other deprivation of liberty without due process of law. What is an appropriate case for the issuance of the writ to protect this particular constitutional right is to be determined by the same general principles invoked by Chief Justice Hughes in *Bowen* v. *Johnston, supra:*

> "It must never be forgotten that the writ of *habeas corpus* is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired. *Ex Parte Lange, supra.* The rule requiring resort to appellate procedure when the trial court has determined its own jurisdiction of an offense is not a rule denying the power to issue a writ of *habeas corpus* when it appears that nevertheless the trial court was without jurisdiction. The rule is not one defining power but one which relates to the appropriate exercise of power. It has special application where there are essential questions of fact determinable by the trial court. *Rodman* v. *Pothier, supra.* It is applicable also to the determination in ordinary cases of disputed matters of law whether they relate to the sufficiency of the indictment or to the validity of the statute on which the charge is based. *Id.; Glasgow* v. *Moyer, supra; Henry* v. *Henkel, supra.* But it is equally true that the rule is not so inflexible that it may not yield to exceptional circumstances where the need for the remedy afforded by the writ of *habeas corpus* is apparent" (306 U. S. at 26-27).

The most fully considered opinion, with which we are familiar, on the application of these general principles to the particular question of a coerced confession is that of Judge Fahy in *Smith* v. *United States*, 187 F. 2d 192. There Judge Fahy pointed out the apparent conflict between "on the one hand Supreme Court opinions stating that

habeas corpus is available to correct the denial of any constitutional right, and on the other hand, the decisions of the courts of appeals that convictions based on coerced confessions cannot for that reason alone be set aside on collateral attack by the habeas corpus procedure" (p. 197),[3] He suggested that reconciliation of these two apparently opposing views might perhaps be found "in the proper application of the principles so clearly set forth in *Sunal* v. *Large* . . . that habeas corpus cannot be substituted for an appeal . . .". From this he concluded that "Where the alleged error of the trial court is in the admission of evidence subject to correction on appeal, and there is representation by counsel, habeas corpus is not the appropriate remedy." But Judge Fahy was careful to add that "Such admission alone does not result in the denial of a constitutional guarantee so long as the error is subject to correction on an appeal and there is no indication of any deterrent to an appeal such as lack of counsel."

With this analysis of Judge Fahy we have no funda-

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[3] Cases involving federal prisoners are apparently uniform in holding that the coerced confession issue may not be relitigated in habeas corpus proceedings. *Burall* v. *Johnson*, 134 F. 2d 614; *Miller* v. *Hiatt*, 141 F. 2d 691; *Eury* v. *Huff*, 146 F. 2d 17; *Cash* v. *Huff*, 142 F. 2d 60; *Smith* v. *United States*, 187 F. 2d 192. However, in cases involving state prisoners, federal courts appear to follow a more flexible approach. In *Sharpe* v. *Commonwealth of Kentucky*, 135 F. 2d 974, all of the evidence pertaining to the involuntary character of the confession was submitted to the jury at the trial in the state court, which determined the issue adversely to the prisoner. No appeal was taken from the verdict and judgment. On petition for habeas corpus, the federal district court took exhaustive evidence of the facts and circumstances relating to the allegedly coerced confession, but made no findings on this issue and dismissed the petition on the ground that the issue could not be properly raised in habeas corpus proceedings. *Ex Parte Sharpe*, 36 F. Supp. 386. The Court of Appeals reversed and remanded the case to the district court to report its findings. 135 F. 2d at 977. Subsequently the district court filed findings of law and fact, and found that the coerced confession claim was not sustained by the evidence. The Court of Appeals affirmed, 142 F. 2d 213. Compare *Schramm* v. *Brady*, 129 F. 2d 108.

mental disagreement. It is consistent with the opinion of Mr. Justice Van Devanter in *Salinger* v. *Loisel*, 265 U. S. 224, when he said: "Among the matters which may be considered and even given controlling weight are: (a) the existence of another remedy, such as a right in ordinary course to an appellate review in the criminal case, and (b) a prior refusal to discharge on a like application." (p. 231.) It is also consistent with the many cases in which this Court has held that habeas corpus was not available as a remedy for an alleged denial of constitutional right in state courts when all available remedies by way of direct appeal in the state courts and application for review by this Court had not been exhausted. (See cases cited in *Darr* v. *Burford*, 339 U. S. 200, 206, notes 15, 16 and 17.) When review by this Court was available as a matter of right, the logical corollary to such a holding was that the particular constitutional claim could never be presented by way of collateral attack in habeas corpus proceedings in the lower federal courts unless there were unusual circumstances justifying failure to exhaust available state remedies. Whether the same principle should still apply and, if so, to what extent the same conclusion should follow, was the subject of considerable discussion and division of opinion in *Darr* v. *Burford, supra*. But as both the majority and dissenting opinions in the *Darr* case make absolutely clear, the underlying assumption of all these cases is that the controlling considerations are grounded in comity rather than res judicata; and there is not the slightest room for doubt that, in the absence of opportunity for direct review by this Court, the determination of constitutional issues in state court criminal proceedings would be subject to collateral attack in habeas corpus proceedings in the federal courts. If the result were otherwise, the state court determination of a federal constitutional question would be final; and, despite the theoretical availability of habeas corpus, there would

be no opportunity to secure federal protection against the violation, in such state proceedings, of the constitutional right not to be deprived of liberty without due process of law. It is with such controlling considerations in mind that we turn next to an examination of the question whether there was in fact available to this petitioner such opportunity for direct review by this Court of the alleged denial of constitutional right as would have justified a lower federal court in dismissing a petition for habeas corpus in the absence of any state post-conviction remedies.

C. *The failure of the State of Illinois to provide any method by which petitioner could obtain, without cost to himself, a transcript of the testimony at the original trial was an effective deterrent to appeal sufficient to render the doctrine of res judicata inapplicable.*

As the opinion of Judge Fahy makes so clear, if the availability of an adequate appellate remedy is at least one of the keys to the determination of when constitutional questions are open to readjudication in habeas corpus proceedings, it is a real and not merely theoretical opportunity for appeal that must be available. But as a matter of harsh reality, there was no way in which this petitioner could have presented by way of appeal and then certiorari to this Court the soundness of his claim that he had been denied due process by admission of coerced confessions. The basis for this suggestion is the failure of Illinois to provide any means by which an indigent defendant may obtain a transcript of the evidence in his trial for the purposes of appeal without himself bearing the costs of transcription, unless the death sentence has been imposed. Ill. Rev. Stats., ch. 37, sec. 163(b); ch. 38, sec. 769(a). If the petitioner herein had sought a writ of error, the only record which would have been available to him substantially without cost would have been the common law record which

would have been insufficient to present the claim of denial of due process through the use of coerced confessions.[4] As the petitioner's motion for leave to proceed as a poor person in the original proceedings herein makes clear, petitioner has not, even up to the time when these proceedings were instituted, had the means to procure "the complete records necessary materially to aid in proving all of the allegations made in his petition." (R. 8.) The petition also shows that the petitioner has not heretofore sought relief by any other remedies. (R. 8.) It is, therefore, apparent, both from the specific allegations referred to above and the general tenor of the entire petition, that the petitioner is one of those who would be substantially affected by the absence of any provision whereby the record might be secured at the expense of the state. Although petitioner does not allege that he tried to get the transcript of evidence without cost, the law of Illinois on this question is so clear and so generally well understood by the Illinois bar that petitioner could hardly be required to do so futile an act.

This Court is no stranger to the limited character of the

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[4] Under the Illinois practice, according to the rules of the Illinois Supreme Court, adopted pursuant to statutory authority, review of a criminal conviction by way of writ of error is in general governed by the rules applicable to appellate review in civil cases. Ill. Rev. Stats., ch. 110, sec. 259.28; ch. 38, sec. 747. The notice of appeal must thus be filed within ninety (90) days after the entry of the judgment. Ill. Rev. Stats., ch. 110, sec. 259.34 (1) (a). In criminal cases "the bill of exceptions, or the report of the proceedings at the trial . . . shall be procured by the plaintiff in error and submitted to the trial judge or his successor in office for his certificate of correctness, and filed in the trial court within one hundred (100) days after the judgment was entered, or within such period thereafter as shall, during such one hundred (100) days, be fixed by the court, or in such further time as may be granted within any extended time." Ill. Rev. Stats. ch. 110, sec. 259.70A. At the time of Jenning's conviction, the bill of exceptions had to be filed within fifty (50) days after judgment was entered. The rule was amended, effective March 1st, 1950, to allow 100, instead of 50, days. Smith-Hurd Ill. Ann. Stats., Ch. 110, sec. 259.70A.

review which is available in the Illinois Supreme Court upon the common law record. *Carter* v. *Illinois*, 329 U. S. 173; *Foster* v. *Illinois*, 332 U. S. 134. This Court has also indicated its assumption that there must be some proceedings available either in the Illinois courts or the federal courts through which a more penetrating review of criminal proceedings in the Illinois courts may be obtained and through which other constitutional claims may be presented. 329 U. S. at 179, 332 U. S. at 139. It is also apparent that the petitioner's claim that he was denied due process through use of coerced confessions could only be adjudicated on the basis of all the evidence relating to that issue. Irrespective of the extent to which this Court should accept, or substitute its own judgment for, the judgment of the highest court of the State with respect to the voluntary or coerced nature of a confession, there must be first available a record upon which the judgment of either the state court or this Court may be predicated. Thus denial of the record to this petitioner effectively precluded him from obtaining the judgment of the highest court of the state upon this question; and if there is no other way of litigating the question, it would also preclude him from ever obtaining the benefit of any federal protection whatsoever from the principle so consistently announced by this Court that the use of a coerced confession for the purpose of obtaining a conviction is a denial of due process.

The significance of the cost of obtaining a transcript of the evidence as an effective bar to an appeal is attested by the federal statutory provisions (28 U. S. C. A. 1915, 63 Stat. 104), as well as the statutory provisions of at least 31 states, making such transcript, or an adequate substitute, available without cost to indigent defendants for purposes of appeal in criminal cases[5] (See Appendix B). In Eng-

[5] A 32nd state, Vermont, makes such relief available when the sentence is death or imprisonment for ten years or more. Two others, New Jersey and Pennsylvania, somewhat like Illinois, provide such relief in cases

land also provision is made for paying the cost of transcription of shorthand notes of the trial for the use of the Court of Criminal Appeal out of moneys provided by Parliament. The Criminal Appeal Act 1907, 7 Edw. VII, c. 23, § 16. Indeed Illinois itself recognizes the importance of this factor in providing by statute that where the death sentence has been imposed an indigent defendant may obtain the record without cost. Ill. Rev. Stats., ch. 38, Sec. 769(a). It is also noteworthy that the American Law Institute Code of Criminal Procedure adopted in 1930 provided that all appeal papers, including a transcript of the stenographic reporter's notes, should be transmitted by the clerk of the trial court to the appellate court without charge to the appellant. Amer. L. Institute, Code of Criminal Procedure (1931) S. 447. Thus there is ample evidence, in addition to the facts shown in this record and in the record in the companion case of *La Frana* v. *Illinois* (La Frana Record p. 49), indicating the significance of the cost of obtaining the record as an effective bar to appeal in criminal cases.

So far as we have been able to discover, the only decisions of this Court which might be regarded as somewhat contrary to the contention presented here are *Markuson* v. *Boucher*, 175 U. S. 184 and *United States ex rel. Kennedy* v. *Tyler*, 269 U. S. 13. In the *Markuson* case, the petitioner filed in the federal district court a petition for habeas corpus for release from custody under sentence of the state court, after having unsuccessfully appealed to the Supreme Court of the State. In support of his petition he alleged that "he was in straightened circumstances and without means or power to prosecute a writ of error from the Supreme Court of the State to the Supreme Court of the United States, or to employ counsel to present or argue it there,

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where the conviction is for first degree murder or the sentence is death. Two of the states, Tennessee and Virginia, permit a narrative bill of exceptions in place of the transcript. For an earlier collection of statutes on the same subject, see Amer. L. Institute, Code of Criminal Procedure (1931), pp. 1266-1273.

and he is informed and believes that if he had such means it could not be brought on for hearing before the expiration of his sentence" (p. 185). This Court affirmed the denial of the petition upon the basis of the general rule that "after a final determination of the case by the state court, the Federal courts will even then generally leave the petitioner to his remedy by writ of error from this Court" (p. 186). The Court also added in apparent reference to the excuses offered by the petitioner for his failure to seek a writ of error, "The case at bar presents no circumstances to justify a departure from the rule or to relieve from the application of its reasons." The circumstances suggested, it should be noted, were hardly comparable to those presented here, since they did not relate to any special burdens arising out of the particular state procedure, but to the burdens inherent in any application for the writ of error from this Court.

In the *Tyler* case the petitioners had instituted proceedings in the Peacemaker's Court (a special court established by state law) to gain possession of certain property and to set aside the probate of a will. They were successful in the court of first instance, but the Supreme Court of the state issued an order forbidding any further proceedings in the Peacemaker's Court. In the face of this order the petitioners secured the issuance of a mandate from the Peacemaker's Court and undertook to carry it into effect. For this they were adjudged in contempt of the State Supreme Court and sentenced to pay a fine, with imprisonment as the alternative. Upon failure to pay the fine they were committed to jail, and thereupon sought a writ of habeas corpus in the federal district court for their release. Again this Court held that there were no exceptional circumstances to justify departure from the general rule that all appellate remedies must be exhausted, before recourse to habeas corpus in the federal courts. This Court also noted that

there had been a suggestion in the opinion of the court below that "the relators pleaded lack of ability to bear the expense of proceedings for their protection in the state courts or to furnish bonds required on appeal." 269 U. S. at 19. This suggestion was disposed of with the remark: "We are unable to find anything in the record to support this claim, but even if it were true it would afford no basis for a different conclusion" (p. 19). Here again there was no indication of any specially burdensome characteristic of state procedure as compared with federal procedure. Furthermore, the petitioners had themselves invoked the jurisdiction of the state courts. It is no wonder then that this Court said: "Under these conditions, contemners, deliberately having taken the risk of setting at defiance the judgment of the state court, must look for redress, if they are entitled to any, to the appropriate and authorized appellate remedies" (p. 19).

Nevertheless, although the *Markuson* and *Tyler* cases are thus clearly distinguishable on their particular facts, it would be captious to deny that they have apparently been understood by some lower federal courts as supporting the general proposition that the costs of appeal and the inability of the petitioner to bear them are irrelevant circumstances in determining whether a petition for habeas corpus should be entertained.[6] But far more consistent with the more recent decisions of this Court is the holding of the Court of Appeals for the Seventh Circuit that the facts that the petitioner was "without means of hiring counsel and of paying for a record for use in perfecting an appeal from

[6] See *United States ex rel. Rheim* v. *Foster*, 175 F. 2d 772, at 773; *Ex Parte Stonefield*, 36 F. Supp. 453, at 456; *Ex Parte Sharpe*, 36 F. Supp. 386 at 388. (See note 3, p. 18, *supra*). The latter case was subsequently reversed and remanded, 135 F. 2d 974, on the ground that the court had erroneously held that the adjudication in the state courts of the petitioner's claim of coerced confession barred federal courts from reconsidering this issue in habeas corpus proceedings.

the judgment dismissing his petition for writ of error coram nobis," were sufficient to excuse any further exhaustion of state remedies by way of appeal. *Potter* v. *Dowd*, 146 F. 2d 244, 247. This holding in the *Dowd* case bears out the essential soundness of Judge Fahy's rationale in the *Smith* case that lack of counsel is only one illustration of the kind of difficulties that may make the opportunity for appeal so theoretical as to justify its disregard in determining whether habeas corpus is the appropriate remedy. Cf. *Adams* v. *United States ex rel. McCann*, 317 U. S. 269, 274-275. Surely this Court would not take the position that irrespective of how high the State might place the costs of appeal, exhaustion of such remedies would still be required as a condition of recourse to the federal courts for vindication of constitutional rights. The rule requiring exhaustion of state remedies is based on realistic appraisal of the importance of federal protection of federal constitutional rights as against the desirability of avoiding unnecessary interference with the processes of state courts by the federal courts. But respect for the latter consideration has not yet been carried to the extreme of sacrificing entirely the latter. In striking a proper balance certain considerations are not taboo merely because they relate to matters so mundane as the costs of justice and the poverty of the prisoner. And such considerations are particularly relevant in coerced confession cases, for as this Court has noted, "they who have suffered most from secret and dictatorial proceedings have almost always been the poor, the ignorant, the numerically weak, the friendless, and the powerless." *Chambers* v. *Florida*, 309 U. S. 227, 238.

Indeed it might well be thought that the cost of the record is a more onerous burden to place on the indigent defendant even than the cost of counsel, for counsel may sometimes be dispensed with, or secured on a voluntary basis without the

aid of the court, while the record is an indispensable requirement for direct review of constitutional questions such as the one here involved. In making this suggestion, we are not unmindful of the fact that the federal statute making the transcript of evidence available without charge in an *in forma pauperis* proceeding is of a relatively recent origin and that even now the opportunity to proceed thereunder is customarily referred to as a statutory privilege rather than a constitutional right. But our contention is not that there is any constitutional right to an appeal, much less to an appeal *in forma pauperis*. We are dealing only with the question of when res judicata is properly asserted as a bar to adjudication of an otherwise valid claim of deprivation of life or liberty without due process of law. The only convincing reason we have found suggested in federal jurisprudence for acknowledging such a bar, short of final adjudication by this Court, has been the availability of direct appeal (as distinguished from collateral attack) for obtaining such an adjudication. We submit that when that direct road is in fact closed, by circumstances within the control of the state but outside the control of the petitioner, then the justification for accepting such a plea in bar fails and other available avenues for vindication of constitutional right may properly be pursued.

As indicated above, the foregoing argument is presented on the assumption that the same considerations which govern the application of res judicata to the assertion of constitutional claims in federal habeas corpus proceedings are also applicable to the assertion of constitutional claims in state post-conviction proceedings. In making this assumption we recognize that the Illinois Supreme Court, even though its present judgment is explicitly based on federal grounds, might nevertheless in subsequent proceedings hold that, as a matter of state law, different considerations

are applicable and that the constitutional claim here presented is not open in Illinois post-conviction proceedings, irrespective of what might be the applicable rule in federal post-conviction proceedings. Cf. *Williams* v. *Kaiser*, 323 U. S. 471, 479. It is generally understood, however, that the Illinois Post-Conviction Hearing Act was passed in response to the opinion of this Court in *Young* v. *Ragen*, 337 U.S. 235, indicating that unless the confusion with respect to post-conviction remedies in Illinois was cleared up the way would be opened to habeas corpus proceedings in the federal courts. See Jenner, *The Illinois Post Conviction Hearing Act*, 9 F.R.D. 347. The statute was apparently intended by its sponsors to provide an adequate remedy for the same claims of federal right that would have been recognized in habeas corpus proceedings in the federal courts. While the Illinois Supreme Court has not as yet expressly adopted this view, neither has it expressly taken a contrary position. The order issued in the instant case apparently proceeded on the assumption that the petition set forth no facts establishing a claim of federal right on which petitioner was entitled to a hearing. As indicated above, we believe that this was based on an erroneous view of federal law. If that error is made clear in an opinion of this Court, it is quite likely that the Illinois Supreme Court would find no insurmountable barrier to the granting of a hearing under the post-conviction statute. Cf. *State ex rel McManamon* v. *Blackford Circuit Court*, 95 N. E. 2d 556.

If the Illinois Post-Conviction Hearing Act may be interpreted so as to afford a remedy commensurate with federal habeas corpus, the Illinois Supreme Court should be given the opportunity to adopt such an interpretation in the light of an opinion of this Court removing any doubt as to the extent of the federal right at stake, before the way is opened to federal proceedings. If, on the other hand,

the remedies provided under the Illinios Post-Conviction statute are indeed insufficient to provide a suitable substitute for habeas corpus, this petitioner and other petitioners in a similar position, some of whom have been riding the Illinois merry-go-round of post-conviction remedies for some time, should learn this without any further unnecessary delay. Certainly the cryptic order of the Illinois Supreme Court in this and similar cases fails to do justice either to the constitutional rights asserted by the petitioner or the considerations of comity underlying the requirement of exhaustion of state remedies before resort to the federal courts. Therefore, the order of the Illinois Supreme Court should be reversed with directions to permit a hearing on the truth of the petitioner's allegations regarding the coerced confessions unless, as a matter of state law, no such remedy is available.

II. The Illinois Supreme Court erred in holding that petitioner was not entitled to a hearing on the truth of his specific and substantiated allegations that the prosecuting officials by knowing use of perjured testimony denied him due process of law.

The petition originating these proceedings also presented a federal constitutional claim of substantial and independent merit concerning the knowing use by prosecuting officials of perjured testimony. The petition, although prepared *pro se*, states clearly and specifically that "the petitioner was denied due process of law and was convicted with the use of false testimony willfully, corruptly and falsely given to mislead the Court by a witness for the State, Det. Edward Piotter. And the State through her responsible officials knowingly used the false testimony and aided in the perpetration in the fraud upon the Court to the great prejudice of the defendant, in that it deprived him of due process of law and the equal protection of the

law." (R. 22) The petition then goes on to allege: "The police were guilty of using perjury known to the prosecution and Court to aid in the conviction of the defendant Jennings, as can be shown by the transcript of proceedings had in Case 48-1247." (R. 22) In his application for writ of error to the Supreme Court of Illinois, the petitioner, again in a document prepared *pro se*, alleged: "Petitioner alleges that, he was denied due process and equal protection of the law through perjury and fraud known to and abetted by the prosecuting officials." (R. 4-5) There can be no doubt that these allegations stated a substantial claim of denial of federal right. *Mooney* v. *Holohan*, 294 U. S. 103; *Pyle* v. *Kansas*, 317 U. S. 213, 215-216.

But the petition did not stop at these general allegations which, had they stood alone, might have been dismissed on the ground that they were not supported by evidence sufficient to make out a prima facie case of deliberate presentation by the prosecution of perjured testimony. Cf. *Hysler* v. *Florida*, 315 U. S. 411, 421; *Schechtman* v. *Foster*, 172 F. 2d 339, 341. The petition went on to identify exactly the perjured testimony and to support the allegations by exhibits containing excerpts from the record. The allegations were, in brief, that one of the arresting officers testified at the preliminary hearing on motion to suppress illegally obtained evidence that no property had been taken from the petitioner at the time of his arrest; that the same officer testified at the trial before the jury that a ring, identified by another witness for the prosecution as part of the stolen loot, had been taken from the petitioner at the time of the arrest; and that the petitioner was thus deprived of a judgment by the trial court on the merits of the motion to suppress evidence later used against him (R. 23-24). The petition also alleged that this police officer did in fact take the ring from the petitioner.

We do not have here a situation where it is alleged that simply because a witness made contradictory statements during the course of the trial, there was perjured testimony about which the State's Attorney must have known. Cf. *Price* v. *Johnston*, 334 U. S. 266, 271, 288. Nor do we have a situation where a witness for the prosecution recants his testimony after the trial.[7] In such situations the credibility of the testimony has already been weighed by the jury and there is no necessary implication from the contradiction or subsequent recantation that the State's Attorney knew of the perjury, if it was committed. Here the statements were made by a police officer, himself a public official, who was working in close cooperation with the State's Attorney and whose credibility and conduct the jury had no reason to suspect. Only one of the statements was made before the jury so that their inconsistency could not be weighed in determining the credibility of the testimony, and although they were both made before the same judge, they were separated by more than four months and in entirely different contexts, so that there was no opportunity or necessity for choosing between them (R. 45, 66). Both directly and substantially aided the cause of the prosecution, and were made under circumstances rendering it difficult to believe that the State's Attorney was not fully aware that one of them was false, if indeed he was not the initiator of the entire scheme.

The foregoing suggestions are fully supported by the excerpts from the record attached to the petition. On the motion to suppress, Detective Piotter, after having placed

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[7] In these recantation cases the lower federal courts have customarily allowed full hearings in collateral proceedings, although the petitioners have seldom been able to prove their claims. Cf. *U. S.* v. *Ragen*, 158 F. 2d 346, *cert. den.* 331 U. S. 842; 173 F. 2d 668, *cert. den.* 337 U. S. 961. *Tilghman* v. *Hunter*, 167 F. 2d 661; *Sharpe* v. *Kentucky*, 142 F. 2d 215; *Brown* v. *Johnston*, 126 F. 2d 727.

Jennings in a particular apartment at the time of the arrest, testified as follows (R. 61):

> Q. Did you get any property, any personal property, in this apartment?
>
> A. Personal property, no, We didn't take anything that I know of. We didn't take anything.
>
> Q. You didn't get any personal property from there at all?
>
> A. I didn't, no.
>
> Q. Have you seen any personal property that was taken from that apartment?
>
> A. No.
>
> Q. Now, you went back, you say. Was Jennings sitting in the bathroom or was he standing in there or what?
>
> A. Standing. He was trying to get his clothes on, trying to dress.
>
> Mr. Brown [State's Attorney]: Your Honor, I object to any further questioning of this witness. If counsel is done searching now to get evidence to assist his defense, that is one thing.
>
> Mr. Geter: You don't know what I am searching for.
>
> Mr. Brown: Pardon me, do you mind? His witness is on the stand now. His witness has said he took nothing from that apartment, saw nothing taken from that apartment, and since then has seen nothing taken from that apartment. This is a motion to suppress . . .

At the time of the ruling on the motion to suppress, the following colloquy occurred between the Court and counsel (R. 136-137):

> The Court: . . . They took a watch from Rosanna but they gave it back to her. Then they went in and took rings from Evelyn Jackson right off her fingers. That's all they found when they arrested Jennings.
>
> Mr. Geter [Defendant's counsel]: That is what they testified. Of course, Jennings said he had a ring that they took, too, but they denied they took any ring from Jennings.

The Court: Jennings testified he was arrested about five-thirty in the morning in the bathroom and they took a watch and ring from him and rings from Miss Jackson. They searched the dwelling there and they had nothing. As far as taking the rings from the Jackson girl, this was not the dwelling house of Jennings.

Mr. Geter: He doesn't claim any interest in it and he had no interest in the rings.

The Court: As far as Jennings is concerned, there doesn't seem to be anything to suppress.

Mr. Geter: They took nothing from him, according to the police officer.

The Court: So that disposes of Jennings . . .

Counsel for Jennings then continued (R. 137):

> Mr. Geter: I would like for the Court to also find that there was no property taken from them [Smith and Jennings]. They contend there was some property taken *and I wouldn't want to be caught in the position of having them offer some property on the trial.* (Emphasis supplied.)

The Court, after stating that "it might be a question of property taken personally but there was nothing taken in any dwelling house" (R. 137), then proceeded to a discussion of the existence of an arrest warrant for co-defendant Morgan, from whom property had admittedly been taken at the time of his arrest (R. 47). The motion as to Morgan was continued for consideration of the lawfulness of the arrest and seizure, but as to Jennings the motion was denied forthwith.

The same State's Attorney who appeared at the preliminary hearing on the motion to suppress conducted the trial of the case before the jury. At that time this State's Attorney used the same witness to identify, as one of the exhibits which the state had prepared for use against the petitioner, the very ring which the State's Attorney had previously argued to the Court had never been taken from

Jennings (R. 66-67, 85). Even when, on cross-examination of this witness, the petitioner's counsel sought to bestir his sleeping conscience, the only response of the State's Attorney was to seize the opportunity to cement the identification of the ring as having been taken from Jennings (R. 118-119):

> Q. I believe you testified on direct examination that they got some jewelry from Jennings at 5306. Did you see any jewelry there?
>
> A. He was wearing a ring.
>
> Q. He was wearing a ring?
>
> A. That's right.
>
> * * * * * * *
>
> Q. Have you recalled all the time now that they said they got some jewelry from Jennings? You have known that all the time, haven't you?
>
> A. As I recall, they got a ring from Jennings.
>
> Q. Mr. Piotter, without looking at those tags, because I think they specifically state where all this business came from, would you pick out the ring that came from Jennings, without looking at the tag, sir?
>
> A. This one (handing item to counsel).
>
> Q. This is it?
>
> A. I believe so. I don't want to get too close to it.
>
> Q. And where is the jewelry you got from——
>
> Mr. Brown: (Interrupting) May we have the record show what he has picked out, Mr. Geter?
>
> Mr. Geter: He says he believes this is the ring.
>
> Mr. Brown: May we have the number?
>
> Mr. Geter: Yes, he has picked out People's Exhibit 8.
>
> Mr. Brown: May the record show that that has been identified as the ring taken from Jenning's room previously, your Honor?

There is only one inference that can be reasonably drawn from the facts presented by the petition and borne out by the excerpts from the record, namely that the State's

Attorney, fully aware of the false statement by the police officer on the motion to suppress, deliberately took advantage of those statements first to prevent the petitioner from obtaining the benefit of the Illinois rule providing for the suppression of illegally seized evidence before trial (*People* v. *Castree*, 311 Ill. 392) and then to present that very evidence at the trial as an essential link in the chain of evidence for conviction.

It is not here urged that the petitioner had a federal right to have the ring suppressed as evidence. Cf. *Wolf* v. *Colorado*, 338 U. S. 25. It is simply asserted that he was entitled to fair and above-board treatment in respect to the matter of the introduction of this evidence against him, just as he was so entitled with respect to the admission or exclusion of any evidence or the presentation of any defense. He did not receive such treatment because of the adept machinations of the prosecuting officials in using perjured testimony. His federal right to a fair trial was thereby violated, and the serious impact of this violation can readily be seen both from the fact that petitioner was effectively denied a hearing on his legitimate attempt to suppress this evidence and from the fact that the State's Attorney was so anxious to establish that the ring in evidence actually came from petitioner.

Even if the State's Attorney did not know at the time of the motion to suppress that this ring had been taken by the police officers from petitioner, the fact that he planned and prepared the use of this ring as evidence at the trial and thus knowingly took advantage of the police officer's false testimony for the purpose of submitting evidence at the trial which had been concealed from the court on the motion to suppress, should be enough to invoke the principles of *Pyle* and *Mooney*. Certainly he knew at the time of the admission of the evidence that its existence

had been concealed from the Court and that this concealment had in effect deprived the petitioner of a ruling on the merits of his motion for suppression, particularly since this very possibility had been pointed out to him by the petitioner's counsel at the hearing on the motion to suppress (R. 137). Such conduct is hardly calculated to satisfy the "public conscience . . . that fairness dominates the administration of justice." *Adams* v. *United States ex rel. McCann*, 317 U. S. 269, 279. In any event, the circumstances are certainly suspicious enough to give color to petitioner's allegation that the perjury was committed with full knowledge of the prosecuting officials and to entitle the petitioner to an opportunity to prove his allegations. The prisoner can hardly be expected to have direct proof of the State's Attorney's guilty knowledge, which ordinarily can only be inferred from surrounding circumstances. It was the proper function of a hearing, which the petitioner was denied, to determine whether the State's Attorney did in fact have the guilty knowledge toward which all the circumstances point.

Since petitioner has had no previous hearing on this particular issue, there clearly can be no principle of res judicata applicable here. *Cromwell* v. *County of Sac*, 94 U. S. 351; *Russell* v. *Place*, 94 U. S. 606. Furthermore, there has been no such real opportunity for hearing on this issue as might conceivably justify its foreclosure in post-conviction hearings on any grounds. At the time the first statement was made, on the motion to suppress, petitioner testified that a ring had been taken from him, but the police officer denied this, and the judge having no reason to anticipate the subsequent contradiction, accepted the police officer's word. When the second statement was made before the jury, there was no ground for objecting to it merely because inconsistent statements had been made at the

previous hearing. Nor could the inconsistency have been brought before the court and jury at that time in the guise of an objection to the admission of the ring as having been illegally seized. Under the local procedure, objection made at the trial on the ground that evidence should be suppressed as illegally seized is not welltaken. *People* v. *Castree*, 311 Ill. 392, 397-398. Conceivably the issue might have been presented on a motion for a new trial, but it was not and that is certainly not surprising. Presentation of the point would have required careful comparison of exactly what was said at the suppression hearing with the evidence given before the jury and it was not until considerably later that the petitioner was able to obtain the excerpts from the record upon which he now relies (R. 8, 63). Furthermore, a full exploration of the issue, as we have already indicated, requires not only consideration of the record, but also an opportunity to examine the State's Attorney to discover what explanation, if any, he might have for his apparent part in the two-faced performance of the prosecution.

In *Sunal* v. *Large*, *supra*, even though no constitutional claim was involved, the opinion of the Court took great pains to indicate that habeas corpus could not be substituted for appeal because appeal had in fact been available. Thus, the Court said:

> "The normal and customary method of correcting errors of the trial is by appeal. Appeals could have been taken in these cases, but they were not. It cannot be said that absence of counsel made the appeals unavailable as a practical matter. . . . Defendants had counsel. Nor was there any other barrier to the perfection of their appeals. . . . Moreover, this is not a situation where the facts relied on were dehors the record and therefore not open to consideration and review on appeal. . . . The error was of record in each case." (332 U. S. at 177).

In the present case, not only is a substantial constitutional issue involved, but, in addition, the issue was not presented and could not have adequately been presented at the trial, facts to some extent dehors the record must be investigated, and, as we have shown above, an appeal was not in reality available to this petitioner. Any one of the foregoing circumstances, to say nothing of their cumulative effect, should be enough to warrant a hearing on the merits of the perjury issue in the post-conviction proceedings.

Conclusion

Petitioner is entitled to a hearing on the merits of his allegations with respect to the use of coerced confessions and perjured testimony to secure his conviction. Because the Illinois Supreme Court, on the basis of a misconception of federal law, denied him such a hearing, its judgment should be reversed.

Respectfully submitted,

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APPENDIX A

An Act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that rights guaranteed to them by the Constitution of the United States or the State of Illinois, or both, have been denied or violated, in proceedings in which they were convicted. Approved Aug. 4, 1949. Laws 1949, p. 722. Illinois Revised Statutes 1949, chap. 38, secs. 826-832; Smith-Hurd Illinois Annotated Statutes, chap. 38, secs. 826-832

§1. Any person imprisoned in the penitentiary who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Illinois or both may institute a proceeding under this Act. The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place a petition (together with a copy thereof) verified by affidavit. Petitioner shall also serve another copy upon the state's attorney by any of the methods provided in Rule 7 of the supreme court. The clerk shall docket the petition upon his receipt thereof and bring the same promptly to the attention of the court. No proceeding under this Act shall be commenced more than five years after rendition of final judgment, or more than three years after the effective date of this act, whichever is later, unless the petitioner alleges facts showing that the delay was not due to his culpable negligence.

§2. The petition shall identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and shall clearly set forth the respects in which petitioners' constitutional rights were violated. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. The petition shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Argument and citations and discussion of authorities shall be omitted from the petition.

§3. Any claim of substantial denial of constitutional

rights not raised in the original or an amended petition is waived.

§4. If the petition alleges that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person. If the petitioner is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel.

§5. Within thirty days after the filing and docketing of the petition, or within such further time as the court may fix, the State shall answer or move to dismiss. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party. The court may in its discretion grant leave, at any stage of the proceeding prior to entry of judgment, to withdraw the petition. The court may in its discretion make such orders as to amendment of the petition or any other pleading, or as to pleading over, or filing further pleadings, or extending the time of filing any pleading other than the original petition, as shall be appropriate, just and reasonable and as is generally provided in Rule 8 of the supreme court and section 46 of the Civil Practice Act.

§ 6. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge as may be necessary and proper.

§7. Any final judgment entered upon such a petition may be reviewed by the supreme court on writ of error brought within six months from the entry of the judgment.

APPENDIX B

STATE STATUTORY PROVISIONS ON COST OF TRANSCRIPT

1. *States permitting indigent defendants in criminal proceedings to obtain without cost transcript of trial proceedings, or its equivalent, for purposes of appeal.*

Arizona: Ariz. Code Ann. (1939) 44-2525.

Arkansas: Ark. Stat. Ann. (1942) 22-357.

California: Deering's Civil Procedure and Probate Codes (1949) §274.

Connecticut: Conn. Gen. Stat. (1949) ch. 170, §3615; ch. 429, §8796 (Public Defender Statute. By letter from the Clerk of the Connecticut Supreme Court it was established that these provisions authorize the defendant to obtain the record without cost.)

Delaware: Del. Rev. Code (1935) ch. 108 §4246.

Florida: Fla. Stat. Ann. (1944) §924.23.

Idaho: Idaho Code (1948) §19-2402.

Indiana: Burns. Ind. Stat. (1946) §4-3511.

Iowa: Iowa Code Ann. (1950) 793.8.

Kentucky: Ky. Rev. Stat. (1948) §28.460.

Louisiana: La. Rev. Stat. 1950, Title 15, §555.

Massachusetts: Ann. Laws (1933) ch. 278, §33, §33(a).

Michigan: Mich. Stat. Ann. (1938) §27.341.

Mississippi: Miss. Code (1944) §1640.

Missouri: Mo. Rev. Stat. (1943) §13354.

Montana: Mont. Rev. Codes (1949) T. 93-1904.

Nebraska: Neb. Rev. Stat. (1948) §24-342.

Nevada: Nevada Stats. 1949, ch. 60.

New York: 66 McKinney's Cons. Laws (1945) Criminal Code, §456.

North Carolina: N. C. Gen. Stat. (1944) §7-89.

North Dakota: N. D. Rev. Code (1944) 27 :0606.

Ohio: Page's Ohio Gen. Code (1938) §1552.

Oklahoma: 20 Okla. Stat. (1937) §111.

Oregon: Ore. Comp. L. Ann. (1940) 93-276.

South Carolina: S. C. Code (1942) §596.

Tennessee: Williams' Tenn. Code (1934) §8819, §1108 (Letter of Clerk of Supreme Court of Tennessee indicates

that a defendant may appeal with a narrative bill of exceptions thus obviating the necessity of a stenographic record).

Texas: Vernon's Code of Crim. Procedure (1950) Art. 760.

Utah: Utah Code Ann. (1943) 21-0-8.

Virginia: Va. Code Ann. (1950) §8-330. (Letter of Clerk of Supreme Court of Virginia indicates that a defendant may appeal with a narrative bill of exceptions thus obviating the necessity of a stenographic record.)

Washington: Remington's Wash. Rev. Stat. (1932) §42-5.

Wisconsin: Wis. Stats. (1945) §252.20.

2. *States permitting defendants to obtain transcript without cost in special cases.*

Illinois: Smith-Hurd Ill. Ann. Stat. (1935) ch. 38, §769a. (Only when death penalty is imposed).

New Jersey: N. J. Stats. Ann.)1939) 2:195-22 (Only when conviction is for first degree murder and sentence is death).

Pennsylvania: 19 Purdon's Stat. (1930) §1232 (Only when conviction is for first degree murder).

Vermont: Ver. Stat. Rev. (1947) § 1421. (Only when sentence is death or imprisonment for ten years or more)

Note: We are indebted to Don H. Reuben, Student Editor of the Journal of Criminal Law and Criminology for laborious research underlying this Appendix. In each state when the statutory provision was not entirely clear, the practice thereunder has been established by correspondence with the clerk of the State Supreme Court.

No. 95

LIBRARY
SUPREME COURT, U.S.

OCT 31 1951

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 95

TALBOT JENNINGS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT.

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RAYMOND S. SARNOW,
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Of Counsel.

Printed by Authority of the State of Illinois

INDEX.

	PAGE
Argument	5
Opinion Below	2
Respondent's Acceptance of Petitioner's Statement of the Case	2
Summary of Argument	4
The Question Presented	3

CASES CITED.

Hysler v. Florida, 315 U. S. 412	14
Frank v. Mangum, 237 U. S. 309	9
Lisenba v. California, 314 U. S. 219	15
Loftus v. Illinois, 334 U. S. 804	8
People v. Carter, 403 Ill. 567	7
People v. Dale, 406 Ill. 238	6
People v. Green, 355 Ill. 468	8
People v. Loftus, 400 Ill. 432	8
Smith v. United States, 187 F. (2) 192	13
Sunal v. Large, 332 U. S. 174	12
White v. Ragen, 324 U. S. 760	8

STATUTES CITED.

Illinois Post Conviction Remedies Act, Ill. Rev. Stat. 1951, Ch. 38, Pars. 826-832	6, 16
Ill. Rev. Stats. 1951, Ch. 38, par. 832, p. 1447	16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 95

TALBOT JENNINGS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT.

The briefs in Jennings v. Illinois, No. 95, and La Frana v. Illinois, No. 96, are identical.

THE JENNINGS CASE, NO. 95, AND THE LA FRANA CASE, NO. 96, DIFFER ONLY IN THE DETAILS OF RESPECTIVE PETITIONERS' NARRATIVES OF ALLEGED FACTS WHICH ARE CLAIMED TO HAVE RESULTED IN THEIR CONVICTIONS AND IMPRISONMENT WITHOUT DUE PROCESS OF LAW.

IN EACH CASE, THE PETITIONER CLAIMS TO HAVE BEEN CONVICTED UPON AN EXTORTED CONFESSION AND UPON OFFICIALLY SUBORNED PERJURY. (IN THE LA FRANA CASE,

No. 96, THE ALLEGED OFFICIALLY SUBORNED PERJURY CONSISTS ONLY IN THE SUPPOSED FALSE TESTIMONY THAT PETITIONER'S CONFESSION WAS VOLUNTARY. IN THE JENNINGS CASE, No. 95, IT ALLEGEDLY CONSISTS ALSO IN FALSE STATEMENTS AS TO THE FACTS CONCERNING PETITIONER'S ARREST AND A SEARCH OF HIS HOME.)

THE ONLY QUESTION PRESENTED IS WHETHER PETITIONER'S RESPECTIVE CLAIMS ARE COGNIZABLE IN THIS STATE STATUTORY PROCEEDING, THERE BEING NO SUBSTANTIAL SUGGESTION IN EITHER CASE THAT PETITIONER WAS PREVENTED FROM ASSERTING HIS CLAIMS IN THE PROCEEDING CULMINATING IN HIS CONVICTION.

THEREFOR IDENTICAL BRIEFS ARE FILED IN BOTH CASES, THE WORD "PETITIONER" REFERRING IN EACH CASE, RESPECTIVELY, TO THE PETITIONER IN THAT CASE.

RESPONDENT'S ACCEPTANCE OF PETITIONER'S STATEMENT OF THE CASE.

Petitioner's counsel has stated the case fully, fairly and accurately. We accept his Statement of the Case without correction or addition.

Opinion Below.

As petitioner's brief correctly states, the Illinois Supreme Court rendered no opinion other than the memorandum and rescript fully and correctly set forth in petitioner's brief. It is not reported.

The Question Presented.

The question presented is:

> DOES THE ILLINOIS SUPREME COURT'S OPINION REST UPON THE ADEQUATE GROUND OF STATE LAW THAT THE ILLINOIS POST CONVICTION REMEDIES ACT DOES NOT AFFORD A MEANS OF ASSERTING MATTERS OF FACT OR CLAIMS OF CONSTITUTIONAL RIGHT THAT WERE OR MIGHT HAVE BEEN PRESENTED IN THE PROCEEDINGS CULMINATING IN PETITIONER'S CONVICTION, IT NOT APPEARING THAT HE WAS PREVENTED FROM ASSERTING SUCH ALLEGED FACTS OR CLAIMS IN THAT ANTECEDENT PROCEEDING?

Properly analyzed, this case presents no question of *res judicata* as opposed to due process of law. The question is whether petitioner's claims, once adjudicated in proceedings intrinsically affording due process, can be asserted *in this purely statutory proceeding*, the purview and ambit of which are delimited by the act creating it as that act has been authoritatively construed by the Illinois Supreme Court.

The Illinois Supreme Court has answered this question in the negative.

The question of permissible latitude of review in Federal post conviction proceedings, such as *habeas corpus* or statutory motion for review, is, we submit, not presented.

SUMMARY OF ARGUMENT.

I.

The Illinois Supreme Court's judgment rests solely upon the ground that Illinois' Post Conviction Remedies Act does not afford an appropriate mode of asserting constitutional claims that were or might have been presented in the proceedings culminating in petitioner's conviction, there being no substantial suggestion that those claims were not and could not have been presented in those proceedings. This is a ground of State procedure, not of Federal constitutional law. Therefore this writ of *certiorari* should be dismissed.

II.

The scope of permissible inquiry upon Federal *habeas corpus* is not an obligatory measure of the scope of inquiry afforded by a purely statutory State proceeding.

III.

Even if the Federal scope of inquiry as to collateral attack on judgments of conviction were the measure of inquiry under this State statutory proceeding, petitioner would not be entitled to a retrial of issues which he litigated or could have litigated at the time of his original conviction.

IV.

If the merits of the case were before the Illinois Supreme Court, then its judgment must still be affirmed because it must be deemed to have weighed petitioner's affidavit as against the evidence and findings in the trial court record and therefore permissibly concluded that petitioner had not "demonstrated" a denial of due process of law.

ARGUMENT.

I.

The Illinois Supreme Court's judgment rests solely upon the ground that Illinois' Post Conviction Remedies Act does not afford an appropriate mode of asserting constitutional claims that were or might have been presented in the proceedings culminating in petitioner's conviction, there being no substantial suggestion that these claims were not and could not have been presented in those proceedings. This is a ground of State procedure, not of Federal constitutional law. Therefore this writ of certiorari should be dismissed.

Petitioner's counsel concedes, with highly commendable fairness and candor, that petitioner's allegations of fact and claims of constitutional rights, *if those alleged facts are cognizable and those claims are justiciable in this proceeding,* make so clear a case of denial of due process that the Illinois Supreme Court's judgment can not rationally be supposed to rest upon a holding that petitioner is justly and duly imprisoned under the Federal constitution even though the averments of alleged fact be taken as true. Therefore, as petitioner's counsel likewise concedes, the Illinois Supreme Court's judgment must have been posited upon the tacit but clear premise that petitioner may not assert these claims in this statutory proceeding.

To phrase this consideration and concession in another way: The Illinois Supreme Court certainly did not hold that a man may be arrested without warrant or probable cause, detained many days *incommunicado,* forced by brutality to confess and suffer conviction on his confession

thus extorted, bolstered by evidence which State prosecuting officials knew to be perjured, all without denial of due process of law under either the Federal or State constitutions. Therefore the Illinois Supreme Court's judgment necessarily rests upon that court's view that petitioner may not assert these claims *in this State statutory proceeding.*

The only authoritative exposition of the Illinois Post Conviction Remedies Act (Ill. Rev. Stats. 1951, Ch. 38, pars. 826-832, pp. 1446-1447) is to be found in *People* v. *Dale*, 406 Ill. 238, which held that Act constitutional but strictly limited its purview to inquiry into constitutional claims that petitioner did not present and could not have presented in the proceeding resulting in his conviction.

The following excerpts from the Illinois Supreme Court's unanimous opinion in *People* v. *Dale* are pertinent (p. 244):

> "The State's Attorney contends that the act does violence to article III of the Illinois constitution because it provides for rehearings and retrials on constitutional issues in causes finally adjudicated; invests power in a *nisi prius* court to set aside its own final judgments regardless of their antiquity, and the final judgments of the Supreme Court. **We do not read such disturbing features into the act and it is not subject to the criticism directed against it in that regard.** It merely provides a procedure by which the judiciary may determine whether or not constitutional rights have been impinged. Should this court, upon a proper record before it, pass upon any given constitutional question in a case, it is not likely the lower court would attempt to overrule or alter the decision. No such power in the lower court is afforded by the act."
>
> **"The remedy provided for under the act cannot be employed to obtain another hearing upon claims of denial of constitutional rights as to which a full and final hearing on the merits has already been had.** * * *" (Emphasis supplied.).

Finally, in *People* v. *Dale*, the Illinois Supreme Court makes it clear that the scope of this statutory remedy is,

as is the scope of remedy afforded by Illinois' statutory substitute for the common law writ of *coram nobis*, confined to matters which petitioner *not only did not but could not present at the time of his original trial or plea of guilty.*

In the *Dale* case the court said, at page 245:

> "* * * **The act in question does not provide for the means of refuting or disputing the original findings and judgment or the affirmance thereof,** but it provides for a new proceeding to afford an inquiry into the constitutional integrity of the proceeding in which the judgment was entered. * * *" (Emphasis supplied.)

As thus authoritatively construed by the Illinois Supreme Court, the office of the statutory Post Convictions Remedies Proceeding and the purview of inquiry which it permits become clear: **The Post Conviction Remedies Act inaugurates a purely statutory remedy, which petitioner need not invoke unless he so chooses, and which, when invoked, affords no mode of inquiring into matters of fact or law which were or might have been litigated in the original proceedings culminating in conviction.**

Were petitioner to assert that he was illegally detained, forced to confess, convicted upon perjured testimony, forced to plead guilty, or otherwise denied due process *and were petitioner to couple these assertions with further substantial charge that he was prevented from vindicating or litigating his claims by, for example, want or incompetency of counsel, he being unable effectively to express his claims without counsel, or, for further example, by concealment of the alleged perjury, the Illinois Supreme Court presumably would in petitioner's case, as it has in past cases, take cognizance of these assertions.*

That the Illinois Supreme Court is not deaf to such claims is clear from the following cases: *People v. Carter*, 403 Ill. 567, recognizes *coram nobis* as an appropriate mode

of asserting that petitioner was convicted without due process *and was prevented from obtaining due process by lack of counsel on arraignment,* although the court found the allegations not sustained by the proof.

People v. *Green,* 355 Ill. 468, holds that where convicted defendants are deprived of constitutional right because of want of competent counsel, *coram nobis* is available.

The Illinois Supreme Court's announcement in *People* v. *Loftus,* 400 Ill. 432, rendered pursuant and in obedience to this court's opinion, judgment and mandate in that case (*Loftus* v. *Illinois,* 334 U. S. 804), declares that where a prisoner was convicted by a jury several of whose members had sat on a previous jury convicting him of a similar and cognate offense *and was prevented from claiming his obvious rights by the court's refusal to appoint counsel for him, habeas corpus* would be available. Incidentally, Loftus subsequently brought *habeas corpus* and was discharged.

But the Illinois Supreme Court has held in the *Dale* case, *supra,* that the Illinois legislature did not, by enacting the Illinois Post Conviction Remedies Act, authorize collateral inquiry into a judgment as to matters which, for aught that petitioner alleges to the contrary, he either asserted or might have asserted in the proceedings in which he was originally convicted.

The ambit of jurisdiction and purview of permissible inquiry in a State proceeding are matters of State law even though claims of substantive Federal rights are asserted. *White* v. *Ragen,* 324 U. S. 760.

II.

The scope of permissible inquiry upon Federal habeas corpus is not an obligatory measure of the scope of inquiry afforded by a purely statutory State proceeding.

Petitioner's counsel argues in substance that Illinois' legislature cannot create a Post Conviction Remedy at all unless it creates a remedy equal in latitude with that afforded by Federal *habeas corpus*.

But this Court has held that the *Federal* writ of *habeas corpus* has been enlarged by Act of Congress so as to afford a scope of inquiry unknown to the common law definition that was the basis for the Federal constitutional provisions embodied in the Bill of Rights. (*Franks* v. *Mangum*, 237 U. S. 309.) Therefore, whatever may be the substantive requisites of due process, there is no Federal right to vindicate petitioners' instant claims in a proceeding of which the purview is limited by the State act authorizing it.

We therefore do not in this case reach the question: Is due process afforded when petitioner has been accorded an opportunity to urge in a prior proceeding that due process was afforded, or must the classical concepts of *res judicata* yield to any substantial assertion that in prior proceedings, a claim of denial of due process, though that claim was or might have been fully presented, was wrongly rejected? No such question is presented in this case.

It is evident that all that the Illinois Supreme Court has held is that where an imprisoned Illinois convict raised, or was not prevented from raising, a substantial Federal constitutional question in the proceeding culminating in his conviction, he may not raise that question under the Illinois Post Conviction Remedies Act. Whether he could or could not raise it in a Federal *habeas corpus* proceeding is not before this court in this case.

Petitioner's counsel rightly insists upon a "realistic" appraisal of this case. Such an appraisal must contemplate the following considerations:

Courts sitting in Illinois, both State and Federal, are inundated by a floodtide of petitions in which prisoners seek to relitigate issues of fact, such as questions as to the voluntary or involuntary character of their convictions, as to the veracity of prosecuting witnesses and as to official knowledge of alleged perjury. These petitions nearly always seek retrial of issues decided many years ago. Witnesses have died, memories (except those of the prisoners) have become dim, records of ancient trials are generally not available, and when they are available, do not reproduce the personalities of witnesses, judge and counsel.

Of course the fact that a prisoner may be a desperate criminal does not afford the slightest ground for denying him due process of law. But the Illinois Supreme Court has not held that it does. What that court has held is that the Legislature did not intend to authorize *under this act* retrial of these cases *absent a showing that the prisoner was prevented from fairly asserting his claims in the proceeding that resulted in his conviction, sentence and imprisonment.* This holding goes to the scope of the remedy, not to any ultimate substantive question of Federal constitutional law.

Petitioner points to the practical inadequacy of appellate review in Illinois in those cases, except cases where the death penalty has been imposed, in which a prisoner can not afford a transcript of record. But the Illinois Post Conviction Remedies Act does not cure such inadequacy. In general, stenographic transcripts of testimony, evidence and the judge's charge to the jury are no more available in this proceeding than they would be on a writ of

error. A prisoner's claim of denial of due process at his trial must usually rest upon a reconstruction of the alleged tenor of those proceedings from the subjective recollections of those present at the time of the trial.

In some cases, such as the instant case, it so happens that a stenographic transcript is available. When that is true, it is of course admissible, as it was admitted in the instant case, to show what happened at the trial. This does not mean, however, that if it appears that the trial court erred in applying constitutional precepts to petitioner's case, or that the jury wrongly assayed conflicting evidence, that error can be corrected *in this statutory proceeding.*

The simple truth is that the Illinois legislature has not intended this proceeding as a substitute for writ of error or other conventional mode of appellate review. The Illinois Supreme Court has so held in the *Dale* case. That holding, since it deals with the scope of a State statutory remedy, is conclusive here.

The Illinois Supreme Court's judgment rests solely upon the ground that the instant proceeding, which is wholly statutory, does not afford any means of vindicating petitioner's rights in this case, there being no showing that he was deprived of an opportunity to assert those rights in the proceedings ultimating in his conviction.

Properly understood, this case raises no question of *res judicata* as a substantive doctrine or concept in criminal cases where Federal constitutional claims are asserted. It involves only the scope of inquiry permissible *in this State statutory proceeding.* The scope of inquiry, so long as it is limited by the remedy involved, is a matter of State law.

Of course a State could not, as a plaintiff, force an accused or convicted person into a proceeding, foreclose by

procedural limitations the assertion of Federal constitutional claims, and then make the result *res judicata*. But this proceeding is statutory and permissive. The prisoner who invokes it does so voluntarily and is subject to the limitations inherent in its statutory nature.

III.

Even if the Federal scope of inquiry as to collateral attack on judgments of conviction were the measure of inquiry under this State statutory proceeding, petitioner would not be entitled to a retrial of issues which he litigated or could have litigated at the time of his original conviction.

We have demonstrated that the Illinois legislature was not bound to create a statutory remedy of latitude measured by that of Federal statutory *habeas corpus* or the Federal statutory motion for a new trial or other Federal mode of attack upon a judgment of conviction.

But even if we assume, for the sake of argument only and without conceding, that the State legislature was bound to adopt the purview of Federal statutory proceedings as measuring the scope of State statutory proceedings, that assumption does not aid the petitioner.

Sunal v. *Large*, 332 U. S. 174, is by no means directly in point. But it declaring that the scope of Federal *habeas corpus* today is a statutory enlargement of the common law writ and that it may not in general be invoked as a substitute for appeal. We cite the case as authority for the proposition that even in statutory proceedings brought in Federal courts to attack Federal convictions, where there is no question of the partition of sovereignty between the State and the National government, due process is not denied by foreclosing review *in such statutory* proceedings substan-

tial of admittedly very claims of injustice occurring at the time of the prisoner's conviction.

We particularly commend to the Court the decision of the United States Court of Appeals for the Fourth Circuit in *Smith* v. *United States*, 187 F. (2) 192. The opinion in that case, while of course it is not authoritative here, carefully studies the question of the right of a convicted person to assail collaterally, *via habeas corpus* or statutory delayed motion for a new trial, his conviction on the ground that it resulted from an allegedly coerced confession, perjuriously pronounced voluntary by the testimony of public officials. That court reaches the conclusion that where, as in the instant case, nothing, such as, e. g., mob domination, absence of counsel or suppression or concealment of official subornation of perjury, prevents a fair trial upon the issues of fact, neither Federal *habeas corpus* nor the Federal motion for a new trial is available to the prisoner.

In the instant case, all of petitioner's contentions tender only issues of fact which were controverted at the time of petitioner's trial. In neither case does it appear that petitioner was deprived of a fair trial, by an impartial judge and an unbiased jury, upon those questions of fact.

We therefore submit, *first*, that the scope of the Federal rule does not necessarily measure the scope of the Illinois State statutory proceeding involved in this case and, *second*, that if the Federal rule did measure the scope of the Illinois State statutory proceeding, the Federal rule is correctly conceived by the *Smith* case and would prevent petitioner's instant attempt collaterally to assail his conviction.

IV.

If the merits of the case were before the Illinois Supreme Court, then its judgment must still be affirmed because it must be deemed to have weighed petitioner's affidavits as against the evidence and findings in the record and thereupon permissibly concluded that petitioner had not "demonstrated" a denial of due process of law.

We do not retreat from our insistence that, as conceded by counsel for petitioner, the Illinois Supreme Court's judgment should be read as resting upon the ground, clearly articulated in the *Dale* case, that this State statutory proceeding does not afford petitioner a means of collaterally attacking his conviction upon claims that were or might have been litigated in the proceedings that resulted in his conviction.

But if we assume that the Illinois Supreme Court deemed the merits of petitioner's claims before it in this proceeding, its judgment should be affirmed.

Hysler v. *Florida*, 315 U. S. 411, is directly apposite: In that case, Hysler had been sentenced to death for murder. Four years after his conviction, he brought *coram nobis*, appending affidavits to the effect that he had been convicted upon false and perjured testimony. The Supreme Court of Florida weighed these affidavits against the trial court record, refusing Hysler any oral hearing *de novo* in which he should have the opportunity of summoning witnesses.

This Court held that this disposition of the case accorded due process. This Court said that a State court may require something more than affidavits uncontradicted in the Post Conviction proceeding before granting a rehearing if the record in the original trial substantially contradicts

those affidavits and leaves the State court satisfied that substantial justice has been done.

> "* * * The Court had to judge the substantiality of this claim on the basis of all that was before it, namely, the petition with its accompanying affidavits and the records of prior cases arising out of the same crime. The Court concluded that Hysler's proof did not make out a *prima facie* case for asking the trial court to reconsider its judgment of conviction. However ineptly the Florida Supreme Court may have formulated the grounds for denying the application, its action leaves no room for doubt that the Court deemed the petitioner's claim without substantial foundation. * * *"

Lisenba v. *California*, 314 U. S. 219, is also in point. The *Lisenba* case was here on two consolidated writs of *certiorari*, one to review the Supreme Court of California's affirmance of petitioner's conviction on direct appeal under the laws of that State and one to review denial of petitioner's application for *habeas corpus*. That application, like the instant applications under Illinois Post Conviction Remedies Act, asserted by affidavits *dehors* the original record of conviction that petitioner had been convicted upon an extorted confession and perjury.

No trial was granted, nor was oral evidence received, on the *habeas corpus* proceeding.

This Court affirmed both the original conviction and the refusal to entertain collateral attack upon it *via habeas corpus*, approving the California's court's appraisal of the affidavits and their contradiction by the record of conviction.

If the Illinois Supreme Court, tacitly overruling its limitation of the scope of the act by the *Dale* case, can be deemed to have entertained this petition on its merits, then it also must be presumed to have weighed the petition as against the trial court record and found it insufficient to entitle the petitioner to what would in effect be a new trial.

Section 6 of the Illinois Post Conviction Remedies Act (Ill. Rev. Stats. 1951, Ch. 38, par. 832, p. 1147) is as follows:

> "The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge may be necessary and proper."

It must therefore be presumed that if this proceeding was appropriate under State law, then both the trial court and the Supreme Court of Illinois assayed petitioner's affidavits in counterpoise against the evidence taken at the time of his trial and permissibly concluded that petitioner had not, as a matter of fact, demonstrated any trial of due process in the proceedings culminating in his conviction.

Conclusion.

For the reasons suggested in this brief, we respectfully submit that the writ of *certiorari* should be dismissed because no Federal question is presented.

Respectfully submitted,

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RAYMOND S. SARNOW,
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Assistant Attorneys General,
Of Counsel.

No. 96

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 96

ARTHUR LA FRANA, PETITIONER,

vs.

PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED APRIL 23, 1951.

CERTIORARI GRANTED JUNE 4, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 96

ARTHUR LA FRANA, PETITIONER,

vs.

PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

INDEX

	Original	Print
Record from Criminal Court of Cook County	c	1
Caption	c	1
Affidavit of verification and pauperey	1	1
Motion for petition for review	3	3
Motions for issuance of subpoenas	4	4
Motion for time to traverse any and all motions	7	6
Motion for leave to present arguments and citations	8	7
Motion for copies of any and all motions	9	8
Petition of review	10	9
Exhibit 1—Denial of application for clemency	27	29
Exhibit 2—Denial of petition for records	28	29
Exhibit 3—Extracts from testimony	28	30
Testimony of Joseph Goldberg	31	30
Dr. Constantine Theodor	37	36
Frank Perkins	40	39
Exhibit 4—Senate Bill No. 630	41	40
Appointment of counsel	44	42
Order extending time to file answer	45	43
Motion to dismiss	47	43
Minute entry of continuance	48	44

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 27, 1951.

—6234

	Original	Print
Record from Criminal Court of Cook County—Continued		
Motion to deny motion to dismiss	50	45
Orders for continuance	57	53
Order assigning cause	61	54
Order dismissing petition	62	54
Clerk's certificate	63	55
Proceedings in Supreme Court of Illinois	64	55
Caption (omitted in printing)	64	
Motion to proceed in forma pauperis (omitted in printing)	66	
Petition for writ of error	67	55
Order dismissing petition	81	71
Clerk's certificate (omitted in printing)	82	
Order granting certiorari	83	71

[fols. a-c]

IN CRIMINAL COURT OF COOK COUNTY

To The Honorable Thomas J. Lynch, Chief Justice of the Criminal Court, of Cook County.

Cause of Action—Civil

PETITION OF REVIEW

(Ad Testificendum)

To be Filed in the Docket of the Above Named Court Pursuant to the Laws Made and Provided.

ARTHUR LA FRANA, ex rel., Petitioner,

vs.

JOSEPH E. RAGEN, et al., Warden, Illinois State Penitentiary, Respondent

PETITION OF REVIEW (Ad Testificendum) AS A POOR PERSON—Filed October 17, 1949

(S.) Arthur La Frana, Petitioner, Pro Se.

Address: The Honorable Thomas J. Lynch, Criminal Court Building, Chicago, Illinois.

Court Clerk: Please inform sender of date received, and Docket Number assigned.

[fol. 1] AFFIDAVIT OF VERIFICATION AND PAUPERCY

I, Arthur La Frana, an inmate of the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, having first been duly sworn, aver and depose, to wit:

I am the identical Arthur La Frana, named in the attached petition, as petitioner, and in the attached documents and papers.

I am a citizen of the United States of America, a resident of the State of Illinois, and am a poor person within

the meaning of the law, having neither Personal nor Real Estate Property, nor assets of any kind, Tangible or Intangible, and is therefore unable to pay the costs of this action or give Surety therefore.

I firmly believe I have a just cause of action worthy of consideration of this Honorable Court, and pray that the Court will grant me leave to file, prosecute, and defend this action as a poor person, In Forma Pauperis.

I affirm that all documents attached as Exhibits in this cause of action are true and correct copies of the original documents now in my possession, which original copies will be submitted to the consideration of the Court by whoever or whatever attorney is appointed to assist me, or submitted to the Court in any manner ordered.

I truly believe that all statements made in the body of these petitions are true and correct in every word and phrase, and that they are made in firm conviction and belief.

I am acting in good faith, and pursuant to and by the provisions of a bill enacted by the General Assembly of the State of Illinois, and under the Bill of Rights of the Constitution of the State of Illinois, and the United States of America.

[fol. 2] Being a poor person and acting under a legal disability, I am praying this Honorable Court to appoint capable and competent counsel to assist, support, and aid me in the prosecution, defense, and conclusion of this action at law, in the nature of a Petition of Review.

Your petitioner further files his Motions for the following:

1. Motion for Petition of Review, Ad Testificendum, that petitioner may be heard in his own proper person, as well as by Counsel, that further essential evidence may be shown and given.

2. Subpoena for Authentic and Certified Articles, from the Daily News, the Daily Sun Times, and the Herald American dated December 11, 12, 13, 14, 1937, pertaining to the robbery purpetrated at the Windsor Theatre, Friday, December 10, 1937, between the hours of 8:30 and 9:00 p. m.

3. Subpoena for Authentic, Certified and Unretouched Photographs from the files of the Daily News, the Daily

Sun Times, and the Herald American, taken at the Hudson Avenue Police Station on January 4, 1938, pertaining to the prisoner, Arthur La Frana.

4. Subpoena for all files, papers, and arrest records, from the Shakespeare Avenue Station, Albany Park Station, and Hudson Avenue Station, pertaining to the prisoner Arthur La Frana.

5. Motion for sufficient time, and leave to Traverse any and all motions made by Respondent, or his Counsel.

6. Motion for leave to present Arguments and Citations, supporting petitioner's cause.

7. Motion for copies of any and all motions, made by Respondent, or his Counsel, and copies of all rulings, decrees and judgments, made by the Court in this cause.

Wherefore, your petitioner prays for leave to proceed unto conclusion, thi just action at law.

Petitioner Prayeth Not Further Here,

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 3] In Criminal Court of Cook County

Motion For Petition of Review (Ad Testificendum)

I, Arthur La Frana, an inmate of the Illinois State Penitiary, Stateville Branch, Joliet, Illinois, hereby Move and Motion this Honorable Court to issue a Petition of Review, Ad Testificendum, that I may appear before this Honorable Court in person, to testify and to give essential evidence in my own behalf.

Under Section 6, of A Bill For an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted, it is within the jurisdiction and discretion of the Court to order the appearance of the petitioner. It is a right of a petitioner in an action of this kind, to appear before the bar that he may

show further cause and evidence as to why he should have his petition honored.

The right to be heard, includes the right to be heard in person as well as the right to be heard by counsel.

Wherefore, in accordance with law, statutes made and provided, it is prayed that this Honorable Court will issue an order, directed at Joseph E. Ragen, Warden of the Illinois State Penitentiary, Statesville Branch, Joliet, Illinois, and Respondent in this cause, to produce your petitioner in Court for a full and complete hearing, that justice might have the rightful facts of the case for consideration at the hearing, that evidence might be heard for the wronged, and that the petitioner's side of the case may be brought into view as well as the defending party of the petition.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 4] IN CRIMINAL COURT OF COOK COUNTY

SUBPOENA FOR AUTHENTIC, CERTIFIED ARTICLES FROM THE CHICAGO DAILY NEWS, DAILY SUN TIMES, CHICAGO HERALD AMERICAN

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby moves and requests this Honorable Court to issue Subpoenas for Authentic, Certified Articles, from the files of the Chicago Daily News, the Daily Sun Times, and the Chicago Herald American, dated December 11, 12, 13, 14, 1937, pertaining to a witness, Miss Betty Howard, witness to a robbery at the Windsor Theatre, Friday, December 10, 1937, between the hours of 8:30 p. m. and 9:00 p. m.

The right to be heard, includes the right to present evidence, and the right to present evidence, includes the right of process for the procurement of evidence.

Wherefore, in accordance with these inherent rights, it is prayed that this Honorable Court will issue Subpoenas, directed to the Editors and Publishers of the above named News Papers, commanding them to bring into Court, the

requested articles, that justice might have the rightful facts of the case for consideration at the hearing, that the evidence so requested might be heard for the wronged, and that the petitioner's case may be brought into view as well as that of the defendant party.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 5] SUBPOENA FOR AUTHENTIC, CERTIFIED, UNRETOUCHED PHOTOGRAPHS FROM THE CHICAGO DAILY NEWS, DAILY SUN TIMES, CHICAGO HERALD AMERICAN

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby moves and requests this Honorable Court to issue Subpoenas, for the Authentic, Certified, Unretouched Photographs, from the files of the Chicago Daily News, the Daily Sun Times, and the Chicago Herald American, dated January 4, 1938, and taken at the Hudson Avenue Police Station, in connection with the petitioner prisoner, Arthur La Frana.

The right to be heard, includes the right to present evidence, and the right to present evidence, includes the right of process for the procurement of evidence.

Wherefore, in accordance with these inherent rights, it is prayed that this Honorable Court will issue Supoenas, directed to the Editors and Publishers, of the above named News Papers, commanding them to bring into Court, the requested articles, that justice might have the rightful facts of the case for consideration at the hearing, that evidence so requested might be heard for the wronged, and that petitioner's case may be brought into view as well as that of the defending party.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 6] SUBPOENA FOR FILES, PAPERS, ARREST RECORDS FROM THE SHAKESPEARE AVENUE STATION, ALBANY PARK STATION, HUDSON AVENUE STATION

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby moves and requests this Honorable Court to issue Subpoenas, for Files, Papers, Arrest Records, from the Shakespeare Avenue Police Station, the Albany Park Police Station, and the Hudson Avenue Police Station, pertaining to the arrest, incarceration, and custody, of the petitioner/prisoner, Arthur La Frana, arrested December 30, 1937.

The right to be heard, includes the right to present evidence, and the right to present evidence, includes the right of process for the procurement of evidence.

Wherefore, in accordance with these inherent rights, it is prayed that this Honorable Court will issue Subpoenas, directed to the Commanding Officers of the above named Police Stations, commanding them to bring into Court, the requested records, that justice might have the rightful facts of the case for consideration at the hearing, that evidence so requested might be heard for the wronged, and that petitioner's case may be brought into view as well as that of the defending party.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 7] IN CRIMINAL COURT OF COOK COUNTY

MOTION FOR SUFFICIENT TIME TO TRAVERSE ANY AND ALL MOTIONS MADE BY RESPONDENT OR HIS COUNSEL

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby Move and Motion this Honorable Court to grant me leave to receive a true and perfect copy of any and all Motions, made by Respondent or his Counsel for him, in regards to the action presented in the Petition of Review, in which I, Arthur La Frana, am the petitioner, and Joseph E. Ragen, stands as the Respondent.

Under the provisions of Section 5, of A Bill, for an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted, the Court has the jurisdiction and discretion to allow your petitioner the right to reply to any and all allegations or contentions made by the Respondent or his Counsel. Should petitioner not be allowed to do so, regardless of how just his petition, or how irrevelant the allegations or contentions of the return may be, petitioner would be suffering an injustice.

Wherefore, I, Arthur La Frana, pray that such copies of all motions made by the Respondent, or his Counsel for him, be made available to me, and that refutations and counter argument may be made, that the case as it truly is made be considered by the Court.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 8] In Criminal Court of Cook County

Motion for Leave to Present Arguments, Citations

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby Move and Motion this Honorable Court to grant me leave to present Arguments, Citations, and discussion on authorities, in support of, and in addition to, the Original Petition of Review, in the nature of Additional Pleadings.

Under Section 5, of A Bill, for an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted, the Court has the jurisdiction and discretion to "make such orders as to amendment of the petition or any other pleadings, or as to pleading over, or filing further pleadings, or extending the time of filing any

pleading other than the original petition, or as shall be appropriate, just and reasonable and as is generally provided in Rule 8 of the Supreme Court and section 46 of the Civil Practice Act."

Wherefore, I, Arthur La Frana, pray that such leave shall be granted me to present Arguments, Citations, and Authorities, pertinent to the petition, and in addition to, that the case may be more fully and more clearly presented, and the ground thereof, may be more fully pleaded thereto.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 9] In Criminal Court of Cook County

Motion for Copies of Any and All Motions Made by Respondent or His Counsel and Copies of All Rulings, Decrees and Judgments Made by the Court in This Petition

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, do hereby Move and Motion this Honorable Court to grant me leave to receive true and perfect copies of any and all Motions made by the Respondent or his Counsel, and true and perfect copies of all Rulings, Decrees and Judgments, made by this Honorable Court, in regards to the action presented in the Petition of Review, in which I, Arthur La Frana, am the petitioner, and Joseph E. Ragen, stands as Respondent.

Should the State's Attorney's Motion to Dismiss be allowed, or should Petition of Review be denied, or favorable judgment therefrom, be denied, petitioner needs the requested copies that he may file his appeal to a higher court, that justice might be done him.

Wherefore, I, Arthur La Frana, pray that such copies of all motions made by the Respondent or his Counsel, be made available to me, and that all Rulings, Decrees and Judgments mad- by this Honorable Court, also be made

available to me, so that in the event of an adverse decision, petitioner may appeal to a higher court.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 10] In Criminal Court of Cook County

[Title Omitted]

Petition of Review

The Honorable Thomas J. Lynch, Chief Justice of the Criminal Court of Cook County

May It Please the Court:

Your petitioner, Arthur La Frana, prays leave to prosecute this Petition of Review, as a poor person, that he may secure his just and lawful "rights", "privileges", and "immunities", within the meaning of the "due process" and "equal protection" clauses of the Illinois State Constitution and the Constitution of the United States of America, and that he be granted just and lawful relief from his illegal confinement.

Petitioner further presents that this matter before this Honorable Court does not require lengthy debate as to the legality or merits of the facts as stated herein, and that the points relied on by petitioner are well founded in law and are of simple construction and easily adjudicated.

[fol. 11] Comes now your petitioner, Arthur La Frana, who respectfully presents unto this Honorable Court that the said petitioner, Arthur La Frana, is now illegally confined and imprisoned in the Illinois State Penitentiary, Stateville Branch, at Joliet, Illinois, by one Joseph E. Ragen, Warden of the said Penitentiary, who is hereby made respondent to this Petition of Review.

Petitioner further presents that the said illegal confinement and imprisonment are pursuant to illegal judgments and sentences ordered and entered by the Honorable John C. Lewe, Judge of the Superior Court of Cook County,

and Ex-Officio Judge of the Criminal Court of Cook County, on the twenty fifth day of February, in the year of our Lord one thousand nine hundred and thirty eight, in certain criminal cases then purportedly pending against the said petitioner and entitled, "The People of the State of Illinois v. Arthur La Frana," Indictment for Murder, being general No. 38-43, and petitioner further presents that the said illegal confinement and imprisonment are pursuant to illegal judgments and sentences ordered and entered by the Honorable John C. Lewe, Judge of the Superior Court of Cook County, and Ex-Officio Judge of the Criminal Court of Cook County, on the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty eight, in certain criminal cases then purportedly pending against the said petitioner and entitled, "The People of the State of Illinois v. No. 38-46, Arthur La Frana", Indictment For Robbery, etc.

Petitioner respectfully presents that in Indictment No. 38-43, it was considered, ordered and adjudged by the Court that the said Defendant Arthur La Frana is guilty of the said crime of Murder in manner and form as charged in the indictment in this cause, and the said verdict and judgment of guilty, and that he be and is hereby sentenced to confinement at hard labor in the Illinois State Penitentiary for said crime of Murder in manner and form as charged in the indictment whereof he stands convicted and adjudged guilty, for the term of Natural Life, and petitioner further presents that in Indictment No. 38-46, it was considered, ordered and adjudged by the Court that the said Defendant Arthur La Frana is guilty of the said crime of Robbery while armed in the manner and form as charged in the indictment in this cause, and the said plea and judgment of guilty, Therefore, it is ordered and adjudged by the Court that the said Defendant Arthur La Frana be and he hereby is sentenced to the Illinois State Penitentiary for the crime of Robbery while armed in manner and form as charged in the indictment whereof he stands convicted, for a term of years not less than one nor more than life as fixed by a statute for the crime whereof he stands convicted.

[fol. 12] Statement of Facts

Petitioner states:

A. That he is one of three defendants.

B. That he was arrested Thursday, December 30, 1937.

C. That he was Indicated and Arraigned January 11, 1938.

D. That he was convicted and sentenced to the term of Natural Life, on Indictment No. 38-43, on the charge of Murder.

E. That he was convicted and sentenced to the term of One year to Life, on Indictment No. 38-46, on the charge of Robbery, etc.

F. That sentence in Case No. 38-43, and sentence in Case No. 38-46, are to run concurrently, one with the other.

G. That in July, 1946, he petitioned the Governor of the State of Illinois, and that such petition was denied (Exhibit 1).

H. That in December, 1947, he petitioned the Governor of the State of Illinois, via the Special Malaria Docket, and that said petition is still pending.

I. That in March, 1948, he petitioned the Honorable Cornelius J. Harrington, Judge of the Superior Court of Cook County, Ex-Officio Chief Justice of the Criminal Court of Cook County, for Transcript of Record, and said petition was denied (Exhibit 2).

Petitioner contends:

1. That he was arrested without warrant and by subterfuge.

2. That he was not promptly brought before a magistrate, but held incommunicado by police for eleven days and denied the right to see counsel, friends or relatives.

3. That he was semi-starved by the police, shuttled from station to station, questioned for prolonged periods, beaten, and forced to sign statements and re-enact a crime of which he is innocent.

4. That the Trial Court exceeded and list its jurisdiction to render judgment, and that the judgments and sentences are void for lack of due process of law.

5. That he was convicted by fraud and false pretense.

6. That he had incompetent counsel.

7. That when he was plead guilty by counsel, in Case No. 38-46, he was under psychological and mental duress.

8. That he is legally and justly entitled to relief from confinement.

9. That this Honorable Court has jurisdiction to act in this matter.

[fol. 13] 1.

The arrest record (Requested via Subpoena) will show that petitioner was arrested without warrant, Thursday, December 30, 1937, between 5:30 a. m. and 7:00 a. m., by Officers Shapolski and Fitzgerald, of the Shakespeare Avenue Police Station.

Officers Shapolski and Fitzgerald came to the home of petitioner at 2621 West Cortland Street, and seizing petitioner, took him to the Shakespeare Avenue Police Station on the pretext of having him identify a supposed suicide. At the police station, petitioner was fingerprinted and confined in a verminous and filthy isolation cell, and subjected to police abuse and intense questioning.

While police have a right to arrest without warrant under certain circumstances, such arbitrary acts are an abuse of the power entrusted to them. This is especially so where there is no cause given, nor reason or explanation as to why there should be an arrest or why petitioner should be the one selected to be arrested. And no reason or explanation was forthcoming at the trial. But, whatever reason there was, should have been left to the discretion of a magistrate or judge to decide whether or not an arrest was warranted.

Being without influential friends, petitioner was at the mercy of capricious police officers, and subject to there every whim without relief. Petitioner was not important enough nor powerful enough to force inquiry into the discrimination practiced by the police officers against petitioner, or the denial of due process of law suffered at the hands of the police. Lacking such friends and power, petitioner had to submit to the will of the police.

2.

The arrest record (Presented via Subpoena) and Transcript of Testimony (Exhibit 3, p. 9, note 27.) will also show that petitioner was arrested December 30, 1937, and

had no hearing of any kind until January 11, 1938, when petitioner was Indicted and Arraigned in the Criminal Court, eleven days after arrest. Such cruelly long detention is purposeful discrimination, and is deliberate denial of due process of law and equal protection of law.

Petitioner submits that police have a right to arrest without warrant, but only where there is positive knowledge that a crime has been committed, and certain knowledge that the person to be arrested has committed or participated in it. But, in such cases, as in cases of arrest upon warrant, the statutes set certain limits and restrict arresting officers to certain procedures. Procedures that must be complied with to meet minimum requirements of due process of law.

[fol. 14] It is a settled rule that if a statute gives a remedy or method of procedure in the affirmative, without containing any express or implied negative, the Court cannot overlook or condone methods of procedure that are contrary to the statute or methods calculated to evade the statute. This is true of any and all procedures or processes based on statute law, and there can be no discrimination as to persons or classes of persons. At law all men are equal.

The Illinois Statutes provide modes of orderly procedure on arrest with or without warrant, and that is, an arraignment before a magistrate "without un-ecessary delay". That mode of procedure must be followed to the exclusion of all others. Whim or capriciousness has no place in the enforcement of law. Each step is bound by statute, and each step must be observed by the law enforcing agencies, else there is tyranny. Officers who fail to comply with these statutes are discriminating against, and denying to a prisoner his "rights", "privileges" and "immunities" secured by Federal and State Constitutions and at statute and common law. And, such denial of "rights", "privileges", and "immunities--, cannot be said to end when a prisoner who has suggered such loss, is finally arraigned in a court. The overwhelming advantage gained by police over such prisoner is psychological and physical and cannot be dispelled by court appearance, and any evidence obtained by such means and advantage gained is used to the fullest extent by police to gain a wrongful conviction. Such evidence and such advantage should be suppressed.

The State Legislature has interposed a magistrate between the citizen and the unrestrained will of the police for the very purpose of preventing such as has occur-ed in this case. Detention for eleven days without a hearing is as unreasonable as it is illegal. Any fruits gained from such illegal detention is illegal in nature and character. And illegal fruits thus gained should be left to wither where they grew,—in the police station from whence they came.

Petitioner submits that it is a well established rule in State Courts as well as Federal Courts that undue detention is a strong enough form of coercion to shut out any confession or statement obtained in such manner, and render them inadmissable. Courts that do not adhere rigidly to the rule modify it to the extent that detention is a form of coercion when accompanied by other circumstances that tend to show coercion. In the instant case the cruelly long detention was coercive, and was especially so in that petitioner never having been in trouble before and ignorant of illegal police practices, was held incommunicado by abusive police, shuttled from station to station, denied the right to see counsel, relatives or friends, and was excessively questioned for varying periods so that he had little or no rest for eleven days. Petitioner contends that such detention is a form of "third degree". Petitioner reiterates that evidence, confessions, statements or advantage thus gained il-egally by police should be suppressed, and not used against a helpless prisoner.

[fol. 15] 3.

Petitioner contends that the simi-starvation diet as practiced by the Chicago Police on prisoners in their custody is a form of coercion. Surely bologna sandwiches, the sole diet of petitioner for eleven days, can in no sense be called adequate. Petitioner's normal weight at the time of his arrest was approximately 155 lbs. Yet eleven days later when he was taken to the County Jail, he weighed 135 lbs. a loss of some twenty pounds.

The "bologna" diet prolonged for a period of eleven days, the shuttling of petitioner from station to station, and the intense questioning for varying periods, is in fact a "third degree" and is clearly a case of undue influence.

used in obtaining statements from petitioner. These undisputed facts constitute more than mere presumption of undue influence, they clearly show as a matter of law, coercion and duress used in obtaining the challenged statements and re-enactment.

Further, the Transcript of Testimony shows that actual brutality was used. Captain Goldberg testified:

That he didn't know and wasn't interested in how long petitioner had been in custody (Ex. 3, p. 1, n. 2; Ex. 3, p. 4, n. 15).

That so far as he knew, petitioner had been fed (Ex. 3, p. 1, n. 3).

That petitioner's black eye was a result of a "tussle" with him and Officer Perkins (Ex. 3, p. 2, n. 6; Ex. 3, p. 3, n 9; Ex. 3, p. 5, n. 17; Ex. 3, p. 6, n. 21; Ex. 3, p. 6, n. 20).

That at the time of the alleged "tussle", petitioner's handcuff was on one wrist (Ex. 3, p. 2, n. 6; #x. 3, p. 3, n. 10; Ex. 3, p. 5, n. 17; Ex. 3, p. 5, n. 19).

Officer Perkins testified:

That he aided Captain Goldberg in subduing petitioner in the alleged "tussle" (Ex. 3, p. 10, n. 29).

That at the time of the alleged "tussle", petitioner had a handcuff on one wrist (Ex. 3, p. 10, n. 29).

Dr. Constantine Theodor, County Jail Physician, testified:

That on January 11, 1938, petitioner entered the County Jail with a black eye and bruised wrists (Ex 3, p. 7, n. 24).

That bruises could not have resulted from handcuffs alone, "but the way they used the handcuffs" (Ex. 3, p. 8, n. 26).

That such bruises would be caused by "pressure" exerted on the handcuffs, and that "pressure" could have resulted from the alleged "tussle" (Ex. 3, p. 9, n. 27).

[fol. 16] In cross examining the County Jail Physician, the State, in effect, concede that the bruised wrists were caused by handcuffs (Ex. 3, p. 9, n, 27). Petitioner contended at the trial, and still contends, that the black eye, the bruised wrists, and sundry other bruises were caused solely by police brutality. The most convincing positive evidence contained in the Transcript of Testimony supporting petitioner's contentions, evidence that cannot be impeached, is the impossibility of both wrists being bruised in a "tussle" when the handcuffs are on but one wrist. On this point the record must prevail. Captain Goldberg and Officer Perkins both were explicit as to the wearing of the handcuff on one wrist at the time of the alleged "tussle". If there was a "tussle" such as Captain Goldberg described, and under the conditions he testified to, petitioner submits that it would be impossible for both wrists to be injured in such "tussle". Therefore, petitioner's contention that the bruised wrists were the result of police brutality stands uncontroverted.

The State conceded that petitioner was held in various police stations for eleven days, and the State conceded that petitioner's black eye and bruised wrists were caused by handcuffs, and therefore the State concedes, in effect, that the statements and re-enactment were obtained by duress and undue influence. And in addition to these points as conceded by the State, is the fact that petitioner was semi-starved for eleven days, was held incommunicado, and denied the right to see counsel, friends or relatives. If these things be not coercive, what then is coercion?

Wherefore, petitioner submits that statements and re-enactment obtained under the conditions shown to exist at the time of their taking, were made under duress and were inadmissable as evidence, and the admission of such statements and re-enactment into evidence was a denial of due process of law.

Petitioner's principal complaint is the obvious denial of due process of law sustained by petitioner in the admitting into evidence the "enforced" statements and re-enactment made to police officers in whose custody petitioner was incarcerated. A denial that voids the conviction and judgment, and nullifies it.

The Constitutional privilege against self-incrimination

is essentially a personal one, and grows out of the high sentiment and regard of American Jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality. It is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him. Physical torture and other less violent but equally reprehensive modes of compelling the production of incriminating evidence are thereby avoided.

[fol. 17] The immediate and potential evils of compulsory self-disclosure transcend any difficulties that the exercise of the privilege may impose on society in the detection and prosecution of crime. While the privilege is subject to abuse and misuse, it is firmly imbedded in our constitutional and legal frameworks as a bulwark against iniquitous methods of prosecution. It protects the individual from any disclousre, in the form of oral testimony, documents or chattels by legal process against him as a witness.

Confession by torture is not one of the precepts by which the civilized world infers guilty. It has always been the unquestioned law in this country that no statement made by a person accused of crime shall be admissable in evidence unless such statement is the free and voluntary statement of such accused. And it has always been the rule that the exertion of any degree of influence or coercion by persons in whose custody the accused is placed which tends to cause duress or coercion renders the statement involuntary and inadmissable. And it is also a rule that such influence or coercion will not be measured to determine whether it actually had an effect on the accused's mind, but that such things shall be presumed to have been coercive and to have been the prompting agent which caused him to make the statement.

There is such influence and coercion present in the Transcript of Testimony in this case. Petitioner submits that it could hardly be more clearly shown than it appeared in the testimony of the various witnesses. The testimony offered by the State in their attempt to show the statements and re-enactment were voluntary was that of the witnesses present when the statements were reduced to writing—all

policemen, prosecutor and reporter, and, opinions by the County Jail Physician, which in fact, favors petitioner's contentions.

The vague, inconclusive and evasive testimony of the police officers is the only evidence that in any way tends to contradict the contentions of the petitioner as to how he was brutally treated and forced to sign statements and re-enact a crime of which he is innocent. Surely, if these charges made by petitioner were not true, the State could have produced more comprehensive and conclusive evidence than that of their clumsy, evasive efforts to cover up their mishandling of petitioner. It is very significant that such clear, and conclusive evidence was not submitted. The evidence and testimony thus detailed did not present a conflict of testimony for the determination of the jury as to whether the statements and re-enactment were voluntary, the issue was clear that the statements and re-enactment were involuntary, and as such were inadmissable as matter of law, and that the Court exceeded its jurisdiction in allowing said statements and re-enactment admitted into evidence over the objection of petitioner.

[fol. 18] The statement has very frequently been made that where a court has jurisdiction of the parties and the subject matter, its decree, however erroneous, can only be attacked upon appeal or error; but the rule is subject to an exception ecually well settled,—that a decree may be void because the court has exceeded its jurisdiction. Courts are limited in the extent and character of their judgments, and if they transcend their lawful powers their judgments and decrees are void and may be collaterally impeached where ever rights claimed under them are brought in question.

Petitioner submits that this Court cannot escape the conclusion that the Trial Court exceeded its jurisdiction in allowing the coerced statements and re-enactment into evidence, and in exceeding its jurisdiction, lost it, thus rendering the resultant conviction and judgment void.

The Federal and State Constitutions prohibit the use of "coerced" confessions, and, it is a fundamental principle of fair trial that no "*oc*erced" or "involuntary" statement is admissable as evidence. The admission of the "involuntary" statements and re-enactment in the instant case

placed an unfair burden on the defendant in trying to prove his innocence. Even though the Court charged that the burden of proof of "voluntariness" rested on the State. The fact that such "enforced" statements and re-enactment were read into evidence and presented to the jury, unfairly prejudiced the defendant's cause.

The burden of proof is never supposed to shift to a defendant, it always remains with the State to prove guilt beyond any reasonable doubt, and the burden of proof is on the State of every material fact presented by the State. Yet in the instant case, petitioner was forced to prove, ineffectively, that the statements and re-enactment presented against him were "involuntary". That, even though petitioner clearly showed that "undue influence" had been used in obtaining the statements and re-enactment, his evidence was ignored and the incompetent statements and re-enactment was admitted into evidence. There was no disagreement in the testimony on the following facts:

That petitioner was held for eleven days without a hearing.

That petitioner was shifted from station to station.

That petitioner was fed "bologna" sandwiches during police custody with the exception of one alleged meal.

That his bruised wrists resulted from handcuffs, though the testimony differs on how the handcuffs were used.

These facts alone show undue influence and coercion, and most certainly show a lack of "due process of law". Therefore, this Court cannot escape the fact that there was a total lack of fairness in the proceeding, and a total want of due process of law from the arrest to the imprisonment of petitioner, and that the conviction and judgment are illegal and void.

[fol. 19]

5.

A fraud was perpetrated on the Court in that the police and the prosecutor knowingly used statements and re-enactment that had been obtained under duress, and, by their testimony and by inferrence so deceived the Court,

that the Court allowed the "coerced" statements and re-enactment admitted into evidence.

A prosecutor should not be allowed to profit by his use of improper evidence known to have been obtained in an illegal manner, in derogation of a defendant's rights. It is as much the duty of the prosecutor to see that a defendant has a fair trial as it is the Court's duty. The State being sovereign, neither needs nor can accept any undue or questionable advantage over one of its citizens. Its proceedings must be kept upon such ethical plane as will be consistent with its dignity and power. Further, a prosecuting attorney is the representative of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such he is in a peculiar and very definite case the servant of the law, the two-fold purpose of which is that guilt shall not escape or innocence suffer. His duty is to prosecute fairly with earnestness and vigor, but, while he may strike hard blows, he is not at liberty to strike foul ones. It is just as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use legitimate means to bring about a just one.

In the present case, the prosecutor used every method possible to gain a conviction. He fostered a coerced statement and re-enactment off on the Court as "voluntary", and he concealed and suppressed a witness to the crime.

It is a rule that "questions of fundamental justice protected by due process may be raised dehors the record". In the present case, petitioner raises the question, not contained in the record, of the concealment and suppression of an eye witness, one Betty Howard, of 1434 North Dearborn Street, and Artist-s Model, who gave police a discription of the principal participant of the crime. Petitioner's post-conviction investigations disclosed the existence of the witness. A witness that should have testified, and whose existence petitioner authenticates by Subpoena for Authentic and Certified Articles from the files of the Daily Times, The Chicago Daily News, and The Chicago Herald American. Further, petitioner respectfully requests the Court to order the police to disclose and produce the witness

that the reason may be learned why she was concealed and suppressed.

It is a common rule that all the witnesses to an overt act be presented whether they be favorable or unfavorable to the State. Fair play demands it. A prosecutor has neither the power nor the jurisdiction to withhold any witness. It is his duty to present all the witnesses and allow the Court to decide upon their competency. And the only exception to this rule is where there are "an unreasonable number of witnesses to the same overt act". It is the Court's sphere of action to determine the competency or incompetency of a witness, not the prosecutor's. In the instant case the prosecutor presented but one alleged eye witness against petitioner.

[fol. 20] Therefore, petitioner contends that because of the knowing use by the police and prosecutor of "coerced" statements and re-enactment, and the concealment and suppression of an eye witness, a fraud was perpetrated on the Court and the conviction was contrived by false pretense, and said conviction should be set aside.

6.

To comport with a minimum requirement of due process of law, a defendant needs the active and able assistance of counsel. Due process requires more in counsel than mere court appearance and a defence conducted on the spur of the moment. A defense must be more that pro forma, it must be conducted in an active and able manner.

In a Capitol Case, where there is no bail, a defendant is entirely dependent upon his counsel for the procurement of witnesses, for investigation of the case, for advice, and for the perfecting of such defense as the circumstances of the case will permit. In the present case counsel did none of these things. Instead:

He relied on petitioner's wife to serve subpoenas on witnesses.

He did not procure such witnesses as were available for the defense.

He did not investigate the case in any way, nor did he ever discover the existence of the concealed and sup-

pressed witness, Betty Howard, though the smallest of investigations would have shown of her existence.

He merely presented such defense as presented itself on the spur of the moment.

Through inability or negligence he was unable to protect petitioner from police brutality, or give him counsel while in police custody, or even to visit petitioner while in custody, though he had been engaged as counsel by petitioner's father.

That he was completely overwhelmed by the legal talent he faced.

He improperly conducted examination and cross examination of witnesses.

Petitioner's counsel was completely overmatched by the prosecutors he faced in the Court room. Overmatched in demeanor, ability and his attempts to present evidence. The following excerpts taken from the Transcript of Record show clearly the inability of petitioner's counsel.

Mr. Leslie Curtis, Appearing on behalf of the State;

Mr. A. Jefferson Schultze, Appearing on behalf of the defendant La Frana,

Mr. Morton Anderson, Public Defender appearing on behalf of defendants Davies and Peabody.

T. 1, p. 15.

Q. Did you observe Peabody's condition at the time?

A. I did.

[fol. 21] Q. What was it, will you tell the Court?

A. Normal. No different condition than he is now.

Mr. Anderson: I object to any question regarding Peabody.

The Court: Objection sustained.

T. 1, p. 65

Q. If a person has handcuffs around his wrists, strung up on a door with his feet hanging off the ground, could sufficient injury be inflicted on the wrist by such a thing?

A. Yes.

Mr. Curtis: That is objected to, if the Court please. If he is going to put a hypothetical question he has to put in all the facts. He can't just relate half of it.

The Court: Objection sustained.

Mr. Curtis: I move to strike out the answer.

The Court: It may be stricken.

Mr. Schultze: Q. If a person were arrested and then handcuffs enclosed around his two wrists, and further hung up,—hung up on a door or wall and suspended there for fifteen or twenty or thirty minutes, and that being done upon one or two occasions, and later released, would such a thing possibly inflict any injuries to the wrists?

Mr. Curtis: That is objected to. He has not laid the basis for a hypothetical question. He has not enough facts in there.

Mr. Schultze: We have sufficient facts to tell the story.

The Court: You will have to state what is lacking.

Mr. Curtis: Also it was shown that this man was taken to a number of police stations. He was handcuffed all that time——

The Court: Listen to this. Listen to this objection. You must incorporate all that in your question.

Mr. Schultze: I can incorporate his idea and weight, if that is what you want.

Mr. Curtis: No, there was a lot of testimony here of him being taken from one station to the other, to the B of I and the gun section, the re-enactment of the crime, all those things. He was handcuffed to a policeman, handcuffed by himself.

[fol. 22] Mr. Schultze: Well, that would be rather general. You would object because it is too general.

The Court: You have to incorporate all those things in your hypothetical question.

Mr. Schultze: It will take a little more time.

The Court: It is not my wish——

Mr. Schultze: All right.

Q. Have you the height of this man on your card?

A. Yes, five, eight.

Q. Have you his weight?

A. 137.

Mr. Curtis: What was the weight?.

A. 137.

Mr. Schultze: Q. What card are you reading from?

A. La Frana.

Q. La Frana?

A. La Frana.

Q. If a person were arrested and had the handcuffs put on him and taken from one station to another, in a patrol car or squad car, and had been subjected to different types of pushing around, beating, and by several members of the police force, this same person had been hung on a door in the police station or squad room of the police station, and hung there for a period of thirty minutes or thereabouts, with his feet suspended from the ground, with his wrists put back of his back, and hung, in a most uncomfortable and torturous position, would you have an opinion as to whether or not it would be possible for such a person to sustain any marks on his wrists?

Mr. Curtis: That is objected to as to form.

The Court: State your objection.

Mr. Curtis: If the Court please, he has conclusions in there, about torturous treatment.

The Court: That may be stricken.

[fol. 23] Mr. Curtis: And being pushed around. He does not show where he was, what stations. How many times he was taken from one station to the other. The fact that there were handcuffs on him all the time, or the fact that he was taken to the gun department of the B. of I., the County Jail, he was moved to several different stations. He does not say what period of time he was over there; that he was in custody and all this was going on.

The Court: Those things have to be included in your question, every detail.

Mr. Schultze: All right, but I would not think they have sufficient bearing on the question such as that, but I will put it in, if it makes a complete form of the question, in addition to some of the facts that I have stated—some portions of this question that I have already put to you.

If this person were taken from the Shakespeare-Hudson Avenue Station in a patrol wagon, and then to the Shake-

speare Avenue Station, and incarcerated there and subjected to questioning there, and suspended on a door, hung up, with his wrists in the back of his back, with handcuffs on them, feet suspended from the ground, and taken to the County Jail, over a period of say five or six or seven days, and would you, upon finding marks upon his wrist, have an opinion on how these marks may have been inflicted?

Mr. Curtis: I object to the form of the question.

Mr. Schultze: Q. Could it be possible that the hanging off of the door with these handcuffs, could produce such marks?

Mr. Curtis: I object to the form of the question.

The Court: He may answer. Overruled.

A. Yes; it could be injury to the wrist.

T. 2, p. 20.

Q. You say it was not the man you identified. Did you identify any man in this particular case?

A. I just pointed——

Mr. Curtis: I object to that. It is not proper cross examination. He does not represent the man or anything else. Just a repetition.

The Court: Objection sustained.

T. 2, p. 38.

Mr. Schultze: How tall are you Arthur?

Defendant La Frana: When I am dressed up I am five feet ten and a half.

Mr. Schultze: Take your seat.

[fol. 24] Q. How much do you weigh, Arthur?

Defendant La Frana: Before I was arrested I weighed one hundred fifty——

The Court: Get on the witness stands, or better wait.

Mr. Schultze: I wanted to make sure we have this witness here.

By the proceeding excerpts of testimony taken from the Transcript of Testimony, this Court can see that petitioner was not ably represented by counsel to the extent required by due process of law and that petitioner's counsel did

not have the ability nor was evenly matched with the "ace prosecutors" arrayed against him, nor did he have the ability to properly present a defense. For these reasons petitioner contends that he was not ably defended by counsel within the meaning of due process of law.

As there are limitations to what punishment the human body will stand, so are there limitations to what the human mind will stand. There is a point where the will breaks down and is compliant to the overwhelming force that has been brought to bear against it.

In such manner petitioner's will was overcome. Overcome by the relentless inexorable will of the police, the prosecutor, the circumstances surrounding his conviction of a crime of which he was innocent, and the circumstances of his position as a prisoner before the bar. Petitioner had lost his will to such extent that he could no longer protest or even try and protest himself against further persecution. His will was beaten into such submission that he was entirely defenceless and prey to any power that exerted itself against him. It was, in fact, complete physical and psychological intimidation, and was caused by police brutality, cruelly long detention, intense questioning, semi-starvation, and the fact that despite all his protests to the contrary, petitioner's rights had been over-ridden and he had been convicted of a crime he had never committed. Wherefore, and to what purpose, could he resist and fight further still, another charge. And knowing before he was brought before the Court that he would be convicted, not because of innocence or guilt, but because it was the will of the police that he should be so convicted. Their will was law. Court process a matter of form. The irresistable will of the police was directed toward a conviction of petitioner, and, regardless of innocence or guilt that will was carried out, law, statutes, and constitutions notwithstanding.

For these reasons and the threat of still further dire consequences threatened by police and prosecutor, if he should force them to the inconvenience of another trial, that caused petitioner to stand mute while his incompetent counsel entered a plea of guilty against him in Indictment No. 38-46. Dire consequences to the extent that they the police would send petitioner's brother to the penitentiary, and

that they would prosecute petitioner's wife on a charge of running a hayen for criminals, and that any sentence given would be made to run consecutive to his original sentence.

Therefore, and for reasons as aforesaid, petitioner firmly believes that he is entitled to all proper relief from the unjust and illegal convictions obtained against him, and relief from his illegal confinement, and petitioner so prayeth.

[fol. 25] 8.

Law is a rule of universal application, in force until changed by an established method. The law of the land has always been than an accused person has an inalienable right to a fair trial; to due process of law, and to the equal protection of the law. Adherence to these fundamental precepts lifts our jurisprudence above prejudice, pet ideologies, and every other pitfall that leads to injustice. For, justice itself is predicated upon the impartial application of law, to the rich and the poor, to the high and the low. All men being equal in the eyes of the law.

A democratic society in which respect for the dignity of man is central, naturally must guard against the misuse of the law enforcement process. Experience has shown, down through the year, that safeguards must be provided against the dangers of the overzealous as well as the despotic. The Illinois State Legislature has recognized this fact in the adoption of Senate Bill 630 (Exhibit 4,), wherein the Trial Court is given the jurisdiction to review the original proceedings on constitutional and State rights. If there has been a substantial loss or denial of these rights, the petitioner is entitled to relief from his illegal confinement. The question naturally arises as to what loss of rights can be considered as substantial. "Substantial" being the variable element, the question is left to the discretion of the reviewing court.

In the present case the record shows that petitioner was held eleven days without hearing; it shows he was shuttled from station to station and fed on a diet of bologna sandwiches, with the possible exception of one meal; and it shows positive evidence of police brutality during the illegal detention. Clearly a loss of every right conceived by man for the protection of man. And the loss of these

rights did not abate when petitioner finally was arraigned in court. The Trial Court blindly accepted bland police assurances that no force was used in obtaining the challenged statements and re-enactment, and, the illegal detention was not explained at all. The Trial Court was not alert to its duty to protect the accused from the denial of basic constitutional rights. Rights that are fundamental to the rendition of justice, and not subject to the whims of courts, police or prosecutors, and are guaranteed at all times under all conditions.

Because of the denial of his rights by the police, the prosecutor and the Trial Judge, rights guaranteed to him by the Constitution of the United States and of the State of Illinois, petitioner firmly believes that he is legally entitled to relief from his illegal confinement. And because he is innocent of the crime for which he stands convicted, petitioner firmly believes that he is justly entitled to relief from his illegal confinement.

[fol. 26] 9.

Under Section 6, of A Bill for an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted (Exhibit 4), the Court is given jurisdiction to "enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge as may be necessary and proper".

Wherefore, and for reason, facts and contentions as set forth within the body of this Petition of Review, petitioner prays that this Honorable Court grant him relief from his grievous and illegal confinement, and therefore prays to be released according to law.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 27] EXHIBIT 1 TO PETITION

State of Illinois, Dwight H. Green, Governor

Department of Public Safety, T. P. Sullivan, Director
Division of Correction, Springfield

October 7, 1946.

To: Arthur La Frana, No. 13533—Joliet.

Please be advised that your application for executive clemency filed to the July 1946 Term of the Board of Pardons has been denied.

Yours very truly, (S.) Robert B. Phillips, Chief Clerk.

C.

[fol. 28] EXHIBIT 2 TO PETITION

Office of Public Defender of Cook County, Illinois,
Francis T. McCurrie, Public Defender

Telephone: Crawford 7300

Chicago, 8, Illinois, March 24, 1948

Mr. Arthur La Frana—#13533, Box 1112, Joliet, Illinois.

Dear Sir:—

Please be advised that your Petition for Records was presented before Judge Cornelius J. Harrington, Chief Justice of the Criminal Court of Cook County on Wednesday, March 17, 1948, and same was denied.

Very truly yours, Francis T. McCurrie, Public Defender of Cook County, (S.) By Irving D. Bloch, Assistant Public Defender.

IDB/cd.

[fol. 29] EXHIBIT 3 TO PETITION

Extracts from the testimony of Captain Joseph Goldberg, Doctor Constantine Theodor, and Officer Perkins, witnesses in the original proceedings, and relevant to the points in contention in this petitioner, and, are true and accurate copies thereof, with the exception of marginal note and page markings, for purposes of identification.

[fol. 30] STATE OF ILLINOIS,
County of Cook, ss:

IN THE CRIMINAL COURT OF COOK COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS,

vs.

ARTHUR LA FRANA (Impleaded)

Indictment No. 38-43, Charge: Murder

Transcript of testimony of Captain Joseph Goldberg and Dr. Constantine Theodore, two of the witnesses heard in the above entitled cause before the Honorable John C. Lewe, Judge of said court, and a jury, beginning on the 15th day of February a. d. 1938.

Mr. Thomas A. Courtney, States Attorney, by Mr. Leslie V. Curtis,

Mr. Harry Posner, appearing on behalf of the State;

Mr. A. Jefferson Schultze, appearing on behalf of the defendant La Frana;

Mr. Morton Anderson, Public Defender, appearing on behalf of defendants Davies and Peabody.

[fol. 31] Direct examination.

By Mr. Curtis:

(1) Q. What is your name?
A. Joseph Goldberg.
Q. Where do you live?
A. 2458 Morse Avenue.
Q. What is your position on the police force?
A. Supervising Captain of Police.

Cross-examination.

By Mr. Schultze:

(2) Q. Captain, who arrested Arthur La Frana, if you know?

A. Definitely, I could not say, some officer of the 32nd district.

(3) Q. Were you able to determine how many days he had been in custody when you first saw him?

A. No, I was not interested in how long he had been in custody.

Q. Did you look at the arrest slip to determine when the arrest was made of this defendant?

A. No sir, I was not interested in that.

(4) Mr. Schultze:

Q. What did you do?

A. I walked to the door of the office and there was three or four men in custody, Peabody and Davies were two of them.

Q. This was on the 31st of December?

A. Yes. And I said, separate those men and don't have them together.

(5) Mr. Schultze:

Q. Did you interrogate any of the three?

A. I did not talk to them all. I told the Captain to separate them, lock them up and given them a chance to think it over.

[fol. 32] (6) Q. By the way, did you observe a black eye on La Frana at that time?

A. No, not then. Later on.

Q. Do you know how he sustained that eye?

A. Sure.

Q. Will you tell us?

A. Yes, sure. Captain Horan and Officer Perkins took him up to the washroom, and I had discussed the matter further with Peabody and Davies, and when Davies admitted his share and the part he took in this affair,—I rushed upstairs then——

Q. Davies admitted that to you?

A. Yes, sir. I rushed upstairs then to the washroom to make inquiry where they went, and they told me upstairs. And I went up to the washroom upstairs, and just as I started up the stairs somebody hollered for Captain Horan there. I went in and said, you are wanted on the phone. That left Perkins and I with La Frana. I then sent Perkins down to get some notes that I had left on Captain Horan's desk, and it left me alone with La Frana. He had handcuffs on his right wrist, one cuff, and the other dangling, and I told him that Davis and Peabody admitted being at the Windsor Theatre job and that they accused him of firing the shot. He stood there rather surprised or stunned, but any way he did not say anything; and I was leaning up against the wall on one side, and he was up against the wall on the other. The door was open. He made a rush for the door to go out the door, the door leading downstairs,—the front stairs, or about two feet from the washroom door and when he did I tackled him, and just as I tackled him Officer Perkins come back up with the notes.

Q. You tackled him?

A. (Continuing) When we took him downstairs again he had a black eye.

Q. Well, there is still some mystery how the black eye was inflicted. Will you tell who hit him?

A. I don't know. I swung and he hit the wall. Now I don't know whether——

(7) Q. Did you also kick La Frana in the crotch in this encounter?

A. No, it did not last long enough, because Officer Perkins was there just about the time it started. Of course, the two of us had no trouble.

[fol. 33] (8). Q. Just a moment. Captain, did you send anyone out for a club?

A. No.

Q. Did you send downstairs to get a club?

A. No.

Q. Did you club La Frana?

A. It was not necessary.

Q. Did anybody else club him under your instructions?

A. No. No reason for clubbing him.

(9) Q. You used no force at all except that one blow that you struck?

A. I did not say I struck; I don't know whether I swung, whether I struck him, I don't know. When I swung he hit the wall. And when we got downstairs he had a black eye.

(10) Q. He still had the handcuffs on his wrist, did he not, on one wrist?

A. Yes.

(11) Q. Captain, while these men were in custody, were they fed regularly?

A. So far as I know, yes.

Q. Did you leave any instructions?

A. I left no instructions. That is not a part of my duty. Those are instructions and details that the individual captain from any district is instructed on and knows what he has to do with prisoners,—how to handle them.

Redirect examination.

By Mr. Curtis:

(12) Q. Before La Frana made the statement, do — recall whether or not the statement of Daries and Peabody were read to him?

A. Yes, sir.

Q. Who were they read by?

A. By Mr. Jackson. I called him in. I think his name is Isaacson, the court reporter, read him the shorthand notes from his book.

[fol. 34] (13) Recross-examination.

By Mr. Schultze:

Q. Did you threaten La Frana and Davies that if they did not go down there and go through some re-enactment, it would be just too bad for them?

A. No, it was not necessary to threaten them.

In Rebuttal

Direct examination.

By Mr. Curtis:

(14) Q. Captain, calling your attention to Monday, the 3rd of January, 1938, between the hours of two and four o'clock in the afternoon at the Hudson Avenue Police Station, did you strike Arthur La Frana, did you put his hands behind his back and handcuff them and hang him on a door. Did you hit him in the stomach with your fist?

A. I did not. I was not at that station.

Q. What time did you arrive at the Hudson Avenue Station on January 3rd?

A. The first time I had been at the Hudson Avenue Station in three months was at 7:30 that evening.

Cross-examination.

By Mr. Schultze:

(15) Q. Captain, how many days did you have custody of Davies and La Frana?

A. I never had custody of Davies and La Frana at any time.

Q. You are supervising captain, your subordinates had them in custody?

A. They did, yes, sir. I didn't.

Q. How many days, five or six days?

A. I don't know. I did not check and I was not interested.

[fol. 35] (16) Q. Did you see anything occur in your presence during those forty minutes that would indicate, as would reflect any undue brutal treatment as to these two boys?

A. None, except furnishing him cigarettes, if that is brutal. That is the only brutal act that I saw.

(17) Mr. Schultze:

Q. You were in the washroom alone with La Frana?

A. For about a minute or a minute and a half, just long enough to tell him that Davies and Peabody——

Q. I am asking how long, a minute and a half—in that minute and a half there was a fight, was there between you and La Frana?

A. No fight. No fight.

Q. No.

A. No fight.

Q. Didn't you testify here before that you swung certain fists——

A. Well, that was not a fight. He tried to get away. It just did not last long enough, he swung and I swung, and it was all over.

Q. What did you swing with?

A. He had the handcuffs on the wrist, jangled off, and started out the door, and I went after him.

Direct examination.

By Mr. Curtis:

(18) Q. By the way, Captain, where are your offices?

A. On the second floor of the Shakespeare Avenue Station.

(19) Q. Now, was La Frana handcuffed at that time?

A. No, sir. He had handcuffs on his hand but he was not handcuffed.

Q. You mean one cuff was on?

A. Dangling on his right wrist, yes, sir.

[fol. 36] (20) Q. Will you relate what happened?

A. La Frana was standing up against the radiator. There was a radiator on the west wall of the washroom, about a foot and a half or two feet inside the door of the washroom. I was standing up against a partition that separates the toilets in this washroom. La Frana had the cuff on his hand, and I saw him swinging it around to get loose—to get the loose end into his hand; as he got it into his hand he left the door and made a swing, and I after him. And as we got out the door just outside the washroom door, to the right about one foot is the entrance leading to the stairs, leading to the outside. And as he swung right out of that door, I after him and I swung and landed him, and both us went down. Just at that time Officer Perkins

was coming up the stairs with the notes that I had sent him down for. We subdued La Frana and took him downstairs.

Cross-examination.

By Mr. Schultze:

(21) Q. You would not call that a battle at all?

A. No battle whatsoever. Nothing to fight about.

Q. And as a result of that La Frana sustained a bruised eye or a black eye, and a bruised cheek bone, is that right; or any other injuries resulting from that?

A. That is the only injury that he had; that's the only injury I have noticed.

Q. He had just one cuff on his wrist?

A. That is all.

Q. And the other one dangled loose off of that one?

A. Yes, sor.

(22) Q. When you took La Frana and Davies to this theatre, neither of them attempted any escape, did they?

A. Did not take them to the theatre. I was in another car. I followed.

Q. You were near there?

A. I was near there—they were handcuffed to a policeman at that time.

[fol. 37] Dr. Constantine Theodor,

a witness called on behalf of the defendant La Frana, being first duly sworn, testified (out of the presence of the jury) as follows:

Direct examination.

By Mr. Schultze:

(23) Q. Your full name?

A. Dr. Constantine Theodor.

Q. Your profession?

A. Physician and surgeon.

Q. Where?

A. In the State of Illinois.
Q. You are assigned to what Place-
A. County Jail.
Q. Assistant physician of the Cook County Jail?
A. Yes, sir.

(24) Q. You had occasion to examine a prisoner, Arthur La Frana?

A. Yes sir.
Q. Will you tell us when he entered the County Jail?
A. January 11, 1938.
Q. Did you personally examine Arthur La Frana?
A. Yes, sir.
Q. Will you tell what his examination disclosed?
A. Physical examination?
Q. Physical examination, yes. Have you a record of the examination?
A. Yes, I have.
Q. To refresh your recollection?
A. Yes, I have.
Q. Will you tell us, the Court, Judge Lewe what it shows?
A. It shows condition of heart, fair; condition of lungs, negative; general physical condition, fair; black eye left—right, rather. Bruise on both wrists.

[fol. 38] Mr. Schultze: All right, but I would not think they have sufficient bearing on the question such as that, but I will put it in, if it make a complete form of the question, in addition to some of the facts that I have stated—some portions of this question that I have already put to you.

If this person were taken from the Shakespeare-Hudson Avenue Station in a patrol wagon, and then to the Shakespeare Avenue Station, and incarcerated there and subjected to questioning there, and taken back again to the Hudson Avenue Station, and further questioned there, and suspended on a door, hung up, with his wrists in the back of his back, with handcuffs on them, feet suspended from the ground, and taken to the County Jail, over a period of say five or six or seven days, and would you, upon finding marks upon his wrist, have an opinion on how these marks may have been inflicted?

Mr. Curtis: I object to the form of the question.

Mr. Schultze: Q. Could it be possible that the hanging off of the door with these handcuffs, could produce such marks?

Mr. Curtis: I object to the form of the question.

The Court: He may answer. Overruled.

A. Yes, it could be an injury to the wrist.

Q. It would be an injury to the wrist?

A. Yes.

Cross-examination.

By Mr. Curtis:

(26) Q. Doctor, these injuries could have been made by handcuffs, do I understand that to be the answer?

A. No, not by handcuffs alone, but the way they used the handcuffs.

[fol. 39] (27) Q. Doctor, he was arrested on the 30th of December, 1937, he was arrested and taken to the Shakespeare Avenue Station, he was taken the next day in custody, the 31st, at the Shakespeare Avenue Station, where he confessed to certain robberies; he was in the custody of the police all during that time. He was handcuffed all during the day of December 31st. On the 1st of January, 1938, he was handcuffed to officers and taken to the Albany Park Station where he stayed the 1st and 2nd. He was removed the 2nd of January, 1938, from the Albany Park Station, handcuffed, back to the Shakespeare Avenue Station. At 6:25 on the evening of January 3, 1938, he was taken to the Hudson Avenue Police Station. That he was in the Hudson Avenue Police Station with handcuffs on him until approximately from 6:25 in the evening of the 3rd until the morning at about three o'clock of the 4th.

On the 4th of January, 1938, he was handcuffed to a police officer, taken in an automobile to the Windsor Theatre on North Clark Street, where he was handcuffed to an officer, he was taken out of the car, walked with the officer from the car to the window of the cashier at the Windsor Theatre, where certain transactions took place, that he turned while he was there, showing how he turned around, with the handcuffs still on him there all this time; was taken back to the automobile, taken over again to the

Hudson Avenue Police Station, from the Hudson Avenue Station being handcuffed again to an officer, he was taken to the Shakespeare Avenue Station; from the Shakespeare Avenue Station he was taken down to the Bureau of Identification at 11th and State Street, all this time being handcuffed, either his two hands cuffed together, or being handcuffed to a police officer. After being taken down to the B of I he was questioned at 11th and State Street and he was again brought back handcuffed to an officer, or handcuffed by himself, his two hands being cuffed together, to the Shakespeare Avenue Station. From the Shakespeare Avenue Station he was again with handcuffs taken to the County Jail, where he arrived on the 11th day——

Your records show the 11th, Doctor?

A. 11th of January.

Mr. Curtis: (Continuing) And while he was at the Hudson Avenue Station with one handcuff on his right wrist and another—the other part of the handcuff he had a fight with Police Captain and another police officer; taking all those things into consideration would your answer be any different, Doctor?

A. Handcuffs never bring injuries except if there is any pressure or any violence. If these things you say he had a fight, maybe it brings injury to the wrist, and of course, that means pressure on the part there. Otherwise, handcuffs alone don't bring injury to the wrist.

[fol. 40] Frank Perkins, a witness called on behalf of the State, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Curtis:

(28) Q. Did you take him to the washroom on the second floor?

A. I did.

Q. Was he handcuffed at that time?

A. There was no handcuffs on his right hand, and the other part was dangling.

(29) Q. On your way back did you hear or see anything?

A. I did.

Q. Tell the Court what you saw or did there at that time?

A. I was halfway up the stairs with the notes when I heard a scuffle at the top of the stairs. I run the rest of the way up, and just at the head of the stairs near the threshold I saw Captain Goldberg and La Frana scuffling, and I jumped into the affray, and between the two of us we subdued him.

Cross-examination.

By Mr. Schultze:

(30) Q. Did you question him again after that day; did you do any questioning the next day?

A. Well, it run into the morning of the next day?

Q. How many continuous hours into the morning did it run, two o'clock in the morning?

A. Yes.

Q. Four o'clock in the morning?

A. We were through by about half past three or four o'clock.

[fol. 41] EXHIBIT 4 TO PETITION

66th G. A.

Senate Bill No. 630

A Bill

For an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted.

Be It Enacted by the People of the State of Illinois, Represented in the General Assembly:

Section 1. Any person imprisoned in the penitentiary who asserts that in the proceedings which resulted in his

conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Illinois or both may institute a proceeding under this act. The proceeding shall be commenced by filing a petition (together with a copy thereof) verified by affidavit. Petition shall also serve another copy upon the state's attorney by any of the methods provided in Rule 7 of the supreme court. The clerk shall docket the petition upon the receipt thereof and bring the same promptly to the attention of the court. No proceeding under this act shall be commenced more than five years after rendition of final judgment, or more than three years after the effective date of this act, whichever is later, unless petitioner alleges facts showing that the delay was not due to his culpable negligence.

Section 2. The petition shall identify the proceedings in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and shall clearly set forth the respects in which petitioner's constitutional rights were violated. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. The petition shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Argument and citations and discussion of authorities shall be omitted from the petition.

Section 3. Any substantial denial of constitutional rights not raised in the original of an amended petition is waived. [fol. 42] Section 4. If the petition alleges that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person. If the petitioner is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to represent him. If appointment of counsel is so requested, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel.

Section 5. Within thirty days after the filing and docketing of the petition, or within such further time as the court may fix, the State shall answer or move to dismiss. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party.

The court may in its discretion grant leave, at any stage of the proceedings prior to entry of judgment, to withdraw the petition. The court may in its discretion make such orders as to amendment of the petition or any other pleadings, or as to pleading over, or filing further pleadings, or extending the time of filing any pleading other than the original petition, as shall be appropriate, just and reasonable, and as is generally provided in Rule 8 of the supreme court and section 46 of the Civil Practice Act.

Section 6. The Court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such *a*upplementary orders as to rearraignment, retrial, custody, bail or discharge as may be necessary and proper.

Section 7. Any final judgment entered upon such a petition may be reviewed by the supreme court on writ of error brought within six months from the entry of the judgment.

[fol. 43] Service omitted in printing

[fol. 44] In Criminal Court of Cook County

P. C. #21

vs.

Arthur La Frana, Petitioner

People of the State of Illinois, Respondent

Appointment of Counsel—October 27, 1949

This day come the said People by John S. Boyle, State's Attorney. Petitioner not present.

And it appearing to the Court that the said Petitioner is not represented by Counsel, the Court of its own motion doth appoint Attorney Francis T. McCurrie, Public Defender, Counsel for said Defendant in the trial of this cause.

It is ordered by the Court that this cause be and the same is hereby continued to November 17th, A. D. 1949.

[fols. 45-46] IN CRIMINAL COURT OF COOK COUNTY

ORDER EXTENDING TIME TO FILE ANSWER—November 17, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

On motion of State's Attorney, it is ordered by the Court that the time to file required Answer be and the same is hereby extended to December 8th, A. D. 1949.

It is ordered by the Court that this cause be and the same is hereby continued to December 8th, A. D. 1949 at 2:00 P. M.

[fol. 47] IN THE CRIMINAL COURT OF COOK COUNTY

[Title Omitted]

MOTION TO DISMISS—Filed December 8, 1949

Now comes the respondent, People of the State of Illinois, by John S. Boyle, State's Attorney of Cook County, Illinois, and Charles W. Corcoran, Assistant State's Attorney, and respectfully moves the Court to strike the petition filed herein and to dismiss the proceeding for the following reasons:

1. The instant proceeding is not based upon a valid and subsisting statutory enactment, the statute under which this petition is brought (Senate Bill No. 630, passed by the 66th General Assembly of Illinois) being contrary to the State of Illinois Constitution, which provides for separation of judicial and legislative powers, which invests the Supreme Court of Illinois with final appellate jurisdiction, and which forbids the legislature from adopting special legislation, i.e. legislation which provides for special protection of constitutional rights to one prisoner and not to another.

2. This Court has no jurisdiction to hear matters raised by points 1, 2, 3 and 5 on page 12 of the petition because as to *nisi prius* courts these matters have been finally adjudicated and determined as a matter of law.

3. The contentions of paragraphs 3, 4, 5, 6, 7 and 8 on page 12 of the petition are mere conclusions, unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto.

4. Not confessing or acknowledging all or any of the matters and things in said petition to be true in manner and form as set forth and alleged, the respondent says that the matters and things therein contained, in the manner and form as the same are set forth, are not sufficient in law to maintain his action against the judgment, and particularly the matters and things set out in paragraphs 1 through 7 on page 12 of the petition as condensations of the violations of petitioner's constitutional rights do not, as there and elsewhere presented in the petition show a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his convicton.

John S. Boyle, State's Attorney of Cook County.
By Charles W. Corcoran, Assistant State's Attorney.

[File endorsement omitted.]

[fols. 48-49] In Criminal Court of Cook County

Minute Entry—December 8th, A. D. 1949

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court that the Hearing be and the same is hereby continued to January 19th, A. D. 1950 at 2:00 P. M.

[fol. 50] IN THE CRIMINAL COURT OF COOK COUNTY

[File endorsement omitted.]

[Title Omitted]

MOTION TO DENY MOTION TO DISMISS—Filed January 11, 1950

Now comes petitioner in the above entitled case, in pro se, and respectfully moves this Honorable Court, that the Motion to Strike the Petition and Dismiss the Proceeding, heretofore issued in the above entitled case and filed herein on the relation of the respondent herein by and through John S. Boyle, State's Attorney of Cook County, Illinois, on December 8, 1949, be denied, dismissed and stricken for the following reasons:

Against Paragraph One of Respondent's Motion to Dismiss:

The petition in the above entitled case is based upon a valid statutory enactment, Senate Bill No. 630, and the said statutory enactment, Senate Bill No. 630, is not contrary to the Constitution of the State of Illinois.

Senate Bill No. 630, does not interfere in any manner with the "separation of the judicial and legislative powres", nor does it disturb the final appellate power of the Supreme Court of Illinois. (See Paragraph 7, Senate Bill No. 630, Exhibit 4, Page 42, of Petition). Instead, it empowers the trial court, the court of original jurisdiction, to correct its own constitutional violations leaving final determination resting in the Illinois Supreme Court.

Senate Bill No. 630, is not "special legislation" in that it "provides for special protection of constitutional rights to one prisoner and not another". It does not create a specially protected class of prisoner nor does it discriminate between convicted and imprisoned persons. Theoretically, cases involving the exacting of capital punishment in Cook County could be without the benefits of the bill, but that is because of the peculiar circumstances that surround capital punishment in Cook County. With the obvious exception of those counties wherein certain State Penitentiaries are located, Cook County is the only county

in the State with the archaic and discriminating custom of exacting the supreme penalty within its own borders. State Penitentiaries are the common and usual places to exact the harsher penalties ordered by the courts, from terms of imprisonment to the supreme penalty. Further, cases in Illinois where the punishment is death is considered a distinct class from those involving a lesser penalty, and this distinctness is recognized by the Illinois Courts through legislative enactment, court rules and court procedures. In such cases, a writ of error becomes more than a writ of right, it becomes compulsory with the so necessary records and questions properly preserved, and in indigent [fol. 51] cases, furnished by the State (See Ill. Rev. Stat. Chap. 38, Para. 769, Sec. 1, and Para. 769a, Sec. 1½). Therefore, the State Legislature and the State Courts do recognize a difference in capital and non-capital cases. In capital cases where time is sometimes short, there is a definate need of extra-ordinary remedies. That need was supplied by the State Legislature, Court Rules and Court Procedures. In non-capital cases where life itself is not at stake, remedies can follow a more leisurely course. With capital cases so amply provided for and protected by such extra-ordinary remedies, they can hardly be said to be discriminated against by Senate Bill No. 630, which but brings all cases on a par with capital cases in the matter of remedies. Further, there is no statutory demand that the execution of the capital sentence be carried out locally. Therefore, any discrimination or withholding of a prisoner from the benefits of the protection afforded by the bill, by denying said prisoner the right or privilege of awaiting the exacting of the capital sentence in a State Penitentiary, would be local in nature and revengeful in character.

Senate Bill No. 630 does not expressly deny, imply or create a bar to its benefits in capital cases or non-capital cases. As there are varying degrees of punishment to fit the crime, so are there various means, methods and factors used in determining that punishment to fit the crime. And to say that Senate Bill No. 630 is discriminating as to prisoners, would be the same as saying that the means, methods and factors so used and the very sentence itself is discriminatory because prisoners have varied sentences instead of the same one.

In all non-capital cases a writ of error is a writ of right and subject to requirements and demands in the nature of certain methods of preserving questions that do not appear on the face of the common law record, a record that contains no evidence, testimony or exceptions taken. The writ must be sufficient in law, substance and evidence, all preserved and presented in strictly technical terms and under circumstances involving heavy expense. Where, through inadequate counsel or for any other reason these vital questions are not preserved or preserved properly, suing out such writ of error is a total waste of time, money and effort. Said writ being invariably denied for lack of proper presentation of questions, evidence and pleadings. An effective bar to that remedy is thereby created against indigent prisoners in non-capital cases. The Federal Constitution commands the State to give an available remedy for constitutional questions (See IV. Amend. U. S. Constitution), and the Illinois Constitution is in accord (See Article 2, Paragraphs 2 and 19, Illinois Constitution).

Senate Bill No. 630, does not ursurp the functions of other extra-legal remedies. While it is possible to raise some constitutional questions on writ of error, as error of the court, when such questions are properly saved or appear on the face of the common law record, there was no specific remedy for constitutional questions, available in Illinois until Senate Bill No. 630 was enacted. In sister States habeas corpus is available for constitutional violations, but in Illinois habeas corpus is stifled, constrained and confined by local court opinion and interpretation to where it is primarily a writ for jurisdictional questions. Therefore, the State Legislature recognizing a constitutional and urgent need for a process to open inquiry into constitutional questions, enacted Senate Bill No. 630 in full compliance with the Illinois Constitution (See Article 2, Paragraphs 2 and 19, Illinois Constitution).

[fol. 52] A State's Attorney is an Officer of the State and as such is a Prosecuting Agent of the People of the State. His duty as such officer and agent is primarily with the prosecution, administration, and the upholding of the laws and enactments of the People of the State, and does not lie in questioning the ability or validity of the duly made enactments of that people. Rather, it is his clear and

sworn duty to uphold the law, not to question it. If that law is questionable, that person, group, or class of persons directly effected or discriminated against has the right to question that law. Senate Bill No. 630, does not so discriminate against the State or the People of the State, and therefore the State's Attorney, as agent for the State, cannot properly question that enactment made by the State.

Against Paragraph Two of Respondent's Motion to Dismiss:

On the question of "final determination" by the Trial Court of points 1, 2, 3 and 5 on page 12 of the petition, and raised in paragraph 2 of Respondent's Motion to Dismiss to the effect that said points are foreclosed to this Court as having been "finally adjudicated and determined as a matter of law", the said points are proper matters for this Court's consideration and within the jurisdiction of the Court.

Issues of fact is a coat of many colors. It does not cover conclusions drawn from uncontroverted happenings, when those happenings and conclusions incorporate standards of conduct or criteria for judgement which in themselves are decisive of constitutional requirements. Such standards and criteria, measured against constitutional requirements, are issues for this Court's adjudication. There are distinctions between issues of fact that are foreclosed and issues which, though cast in the form of final determinations of fact, are the very issues for determination by review. In the determination of points 1, 2, 3 and 5 of the rights were violated or ignored. And those findings or lack of findings, being violative of petitioner's constitutional rights, are open to collateral attack. Under Senate Bill No. 630, trial courts are empowered to determine substantial constitutional questions arising out of the proceeding as a whole and not certain portions thereof (See Section 1, Senate Bill No. 630, Exhibit 4, Page 41, of Petition). Fuether, the determination of these said points, as they now stand, are clear substantial sign posts of the illegal road helplessly traveled by petitioner to illegal imprisonment.

Against Paragraph Three of Respondent's Motion to Dismiss:

Respondent's allegation that "The contentions of paragraphs 3, 4, 5, 6, 7 and 8 on page 12 of the petition are mere conclusions, unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto" is erroneous in that the said contentions are fully covered and supported by extracts from the Transcript of Testimony as reported by the Official Court Reporter. While it is true that the petition does not contain the complete Transcript of Testimony, some one thousand pages, it does contain adequate exact copies of significant portions thereof, properly identified and referred to. Such evidence is legally binding and sufficient in quality to show the Court that the petition is grounded in fact. Other evidence that is also positive and conclusive in nature is requested in [fol. 53] the petition by motion and subpoena. Evidence that is unobtainable by petitioner in any way except through process.

Petitioner is under a legal handicap in that through inadequate counsel a Bill of Exceptions was not saved in his case. So he must rely on certain tracts of the Transcript of Testimony, of the *principle* State witnesses, to show his cause. He is also under legal handicap in that he is unskilled in the art and knowledge of the technical presentation of questions and evidence. Petitioner prays that the Court will overlook the crude but sincere presentations of petitioner in his efforts to obtain justice.

Petitioner tried in March, 1948, to obtain a complete Transcript of Record (See Statement I., Page 12; and Exhibit 2, Page 28, of Petition) from the Court but was denied. Since then he has purchased what records as he could afford, but at fifty cents per page the complete Transcript of Testimony, some one thousand pages, is out of the financial reach of his limited earning capacity of some seven dollars per month. Therefore, he must rely on such records as he has in his possession, portions of which are copied and incorporated in his petition. Petitioner sincerely believes that the said contentions and evidence as so presented, and the evidence so requested by motion and subpoena, are legally sufficient to support his cause and warrant him a full and complete hearing.

Against Paragraph Four of Respondent's Motion to Dismiss:

Respondent's statement that he neither confesses nor acknowledges "all or any of the matters and things in said petition to be true in manner and form as set forth and alleged" is misleading in nature in that it does not deny that the said matters and things occured, and does not show nor contend that the said things are false. And, added to the further statement that "the respondent says that the matters and things therein contained, are not sufficient in law to maintain his action", creates the inference that such matters and things could have occured, and, set forth in a different manner would be sufficient in law. In no way does respondent positively deny that the acts complained of in the petition ever happened. Acts that were violative in every sense of constitutional rights. No, no denial. Just the evasive statement that they are "not sufficient in law to maintain his action". Any violation of a constitutional right that leads to imprisonment is sufficient in law to open inquiry thereto.

Petitioner purposely kept his petition as brief as possibly to facilitate the Court in the adjudication of the issues, secure in the belief that the Court is fully cognizant of the laws involved and respondent fully aware of that fact. Brief mentions are made in the petition to 'due process of law', 'equal protection of the law', 'Privileges and immunities', 'constitutional', 'statute and common law', all in support of petitioner's contentions. If, however, respondent requires specific citations of the laws matched and repeated with the contentions and allegations, point by point and question by question, petitioner will be glad to accommodate. Further, petitioner would be glad to aid that accommodation by being allowed to support his contentions by citation and discussion of authorities, point by point and question by question.

[fol. 54] Respondent's further statement in paragraph four of his motion to dismiss that the "matters and things set out in paragraphs 1 through 7 on page 12 of the petition as condensations of the violations of petitioner's constitutional rights do not, as there and elsewhere presented in the petition, show a substantial denial of petitionar's constitutional rights", is erroneous in that the said mat-

ters and things present age old but ever recurrent questions of police abuse and illegal convictions. Questions that ever condemn illegal police practices and procedures, and questions of illegal fruits gained in illegal manner, illegally used in a void process to illegally convict and illegally imprison petitioner. Questions that have been attacked, and legally assailable, since the birth of the nation. In fact, the questions presented in the petition, are the very types of questions that have resulted in the gradual bestowal of rights to man down through the ages. Questions that are today reviewable under the Nation's Charter (See IV Amend. U. S. Constitution), and reviewable under this State's Constitution (See Article 2, Illinois Constitution), and the laws thereunder (See Senate Bill No. 630, Exhibit 4, Page 41, of Petition; See Also Smith-Hurd Stats. Chap. 38, Sec. 736).

Petitioner is unskilled in court procedures, rules of evidence, and technical pleadings. In so being, he is under legal disability and is no match for trained and experienced attorneys. The State Legislature recognizing that men in prison would be so handicapped, made Senate Bill No. 630 broad enough in its terms, subject to the discretion of the Court, to allow such prisoners to set forth their allegations in ordinary terms supported by such evidence as is available under those circumstances. Petitioner is restrained of his liberty and is restricted in that he does not have access nor funds for volumes of law and court procedures, and for counsel wherefrom he could get professional advice. Although petitioner has general idea of his rights, he is at a disadvantage in not being able to sue out his petition in strictly technical terms. For that reason and in the interests of justice, petitioner prays that the Court will overlook, as far as possible, the crude but honest presentment and evidence in the petition, and consider the contentions and evidence for their honest value rather than their lack of polished technical qualities. The primary purpose of such an action at law is that the truth shall prevail. And a petition such as the one at bar, presented under such handicap, should not be bound by strict technicalities for to do so would defeat the very purpose for which Senate Bill No. 630 was intended.

Petitioner does not concede in any manner that the con-

tentions and evidence in support thereof are faulty, or legally deficient. He sincerely believes that they are sufficient in law, sufficient in presentation, and adequately supported by the copies of pertinent parts of the Transcript of Testimony to merit and warrant him a full and complete hearing.

On the question raised by respondent in relation to the contentions raised in the petition, that the said contentions do "not show a substantial denial of petitioner's constitutional rights", petitioner reiterates that any violation of constitutional rights that result in an unjust and illegal conviction is "substantial" in character, illegal in nature; and constitutionally prohibited. The case at bar comes within the scope of these constitutional prohibitions under the 14th Amendment of the United State's Constitution, and under Article 2, of the Bill of Rights, or the Illinois Constitution. And the petition is raised under Senate Bill No. 630, in full accord with both the Federal and State Constitutions.

[fols. 55-56] Wherefore, in accordance with law, statutes made and provided, petitioner prays that this Honorable Court will order the Motion to Strike the Petition and Dismiss the Proceeding, heretofore issued and filed in the above entitled case on the relation of the respondent herein and filed by and through John S. Boyle, State's Attorney of Cook County, Illinois, on December 8, 1949, to be denied, dismissed and stri-ken, that justice might have the rightful facts of tne case for consideration and that the evidence may be heard for the wronged, and that petitioner's case may be brought into view as well as that of the defending, party of the petition.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

Service omitted in printing

[fol. 57] In Criminal Court of Cook County

[Title Omitted]

Order for Continuance—January 19, 1950

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court, that the Hearing on Petition be and the same is hereby continued to March 30th, A. D. 1950 at 2:00 P. M.

[fol. 58] Order—March 30, 1950

[Title Omitted]

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

It is ordered by the Court that this cause be and the same is hereby continued to June 1st, A. D. 1950 at 2:00 P. M.

[fol. 59] Order—May 1, 1950

[Title Omitted]

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court that this cause be and the same is hereby continued to June 22nd, A. D. 1950 at 2:00 P. M.

[fol. 60] ORDER—June 22, 1950

[Title Omitted]

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court that this cause be and the same is hereby continued to August 3rd, A. D. 1950.

[fol. 61] IN CRIMINAL COURT OF COOK COUNTY

[Title Omitted]

ORDER ASSIGNING CAUSE—August 3, 1950

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

It is ordered by the Court that this cause be and the same is hereby assigned to the Honorable John C. Lewe, Judge of the Superior Court of Cook County and Ex Officio Judge of the ~~Criminal Court~~ of Cook County.

[fol. 62] IN CRIMINAL COURT OF COOK COUNTY

[Title Omitted]

ORDER DISMISSING PETITION—October 11, 1950

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And the Court hearing Counsel in support of the motion to Dismiss Petition heretofore entered herein in this cause as well as in opposition thereto, and being fully advised in the premises, doth sustain said Motion and orders that said Petition be and the same is hereby dismissed.

To which Order of the Court in sustaining said Motion the said Defendant by his Counsel now here excepts.

[fol. 63] State of Illinois,
County of Cook, ss:

I, Vincent J. Poklacki, Clerk of the Criminal Court of Cook County, in said county and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of Common Law Record in a certain cause lately pending in said Court, wherein The People of the State of Illinois was Respondent and Arthur La Frana was Petitioner.

Witness, Vincent J. Poklacki, Clerk of said Court, and the Seal thereof, at Chicago, in said County, this Twenty ninth day of November A. D. 1950.

Vincent J. Poklacki, Clerk.

[fols. 64-65] [Caption omitted]

[fol. 66] Affidavit of Paupercy and Motion to Proceed as a Poor Person Omitted in Printing

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[fol. 67] In the Supreme Court of the State of Illinois

Arthur La Frana, Petitioner,

vs.

People of the State of Illinois, Respondent

Petition for Writ of Error Under Post Conviction Hearing Act (As a Poor Person).

Mr. Justice Simpson

Petition—Filed March 14, 1951

Comes now, Arthur La Frana, petitioner in pro se, who hereinafter shows:

That his petition (P. C. #21, in the Criminal Court of Cook County) under the Post Conviction Act was based upon substantial denials and violations of his constitutional rights under the Federal and State constitutions, and the laws thereunder.

That the said denials and violations of petitioner's constitutional right were in relation to the trial proceedings which resulted in his conviction and imprisonment.

That the said denials and violations of petitioner's constitutional rights were within the meaning, spirit, scope and intent of the Post Conviction Act.

That the Criminal Court of Cook County erred in sustaining the People's Motion to Dismiss and dismissing the petition.

That petitioner is entitled to just and lawful relief from his imprisonment.

Wherefore, in accordance with Rule 27B of this Court, your petitioner files application for Writ of Error Under Post Conviction Hearing Act, via petition, that he may secure relief from his unjust and illegal imprisonment.

[fol. 68] On October 17, 1949, your petitioner filed in the Criminal Court of Cook County; a petition, P. C. #21, in which he contended that his rights under the Federal and State constitutions had been substantially denied and violated in the following manner:

1. That he was arrested without warrant and by subterfuge.
2. That he was not promptly brought before a magistrate, but held incommunicado by police for eleven days and denied the right to see counsel, friends or relatives.
3. That he was semi-starved by the police, shuttled from station to station, questioned for prolonged periods, beaten and forced to sign statements and re-enact a crime of which he is innocent.
4. That the trial court exceeded and lost its jurisdiction to render judgment, and that the judgment and sentences are void for lack of due process of law.
5. That he was convicted by fraud and false pretense.
6. That he had incompetent counsel.
7. That when he was plead guilty by counsel, in Case No. 38-46, he was under psychological and mental duress. (Page 12, and elsewhere in petition)

Petitioner also contended on page 12, and elsewhere in the petition, to the effect that he was legally and justly entitled to relief (8), and that the Criminal Court of Cook County had jurisdiction over the matter (9).

The contentions as set forth in the petition were supported almost entirely by portions of the Transcript of Testimony as taken by the Official Court Reporter (P's. 30-38, of petition; and on point 6, pages 20-24, of petition) and those contentions not so covered were supported by motions for proper evidence, via subpoenas and motions (P's. 2-9, of petition), obtainable by petitioner in no other way.

1

The arrest record (Requested by subpoena, p. 6, of petition) would have shown that petitioner was arrested without warrant.

The Illinois Statutes set forth the only provisions whereby an arrest without warrant can legally be made in Illinois (Ill. Rev. Stat. 1949, Chap. 38, para. 657). The cases cited thereunder show that arrest without warrant is repugnant to the Illinois Constitution. The cases cited under the 14th Amendment of the Constitution of the United States, shows that arrest without warrant is repugnant to that document. This was not a case of sudden peril or imminent danger. Petitioner was seized at his home without warrant.

[fol. 69]

2

The arrest record (Requested by subpoena, p. 6, of petition) and the portion of the Transcript of Testimony pertaining thereto (Exhibit 3, of petition, p., 9, n. 27, at page 39, of Common Law Record), shows that petitioner was arrested December 30, 1937, and had no hearing or arraignment of any kind until January 11, 1938 eleven days after the arrest.

Such unusually long detention of petitioner by police without hearing, charge or arraignment was a deliberate, illegal and purposeful discrimination against petitioner's constitutional rights. The Illinois Statutes provide for orderly and prompt arraignment on arrest without warrant. (Ill. Rev. Stat. 1949, Chap. 38, para. 660). The cases cited thereunder show that such detention is a breach of due process of law. And when detention is one of the circumstances in the taking of statements of admission of crime, either voluntary or involuntary, such detention comes within the inhibition as imposed by the United States Supreme Court in McNabb v. United States, 318 U. S.

334-38, and adhered to in Upshaw v. United States, handed down December 13, 1948, by that Court. The "McNabb Rule" as such, has been upheld by this Court in People v. Goldblatt, 383 Ill. 176, and cases cited therein. There has been later holdings in accordance with the "McNabb Rule" in the triple case handed down by the United States Supreme Court in Watts v. State of Indiana; Harris v. State of South Carolina; Turner v. Commonwealth of Pennsylvania, Case No's. 610, 76, and 107, of the October Term, 1948, decided June 27, 1949.

3

In point 3 of the petition, your petitioner showed in a reasonable manner that bologna sandwiches for eleven days was a semi-starvation diet, and as such, was a form of coercion. He also showed that he was shuttled from station to station, and that actual brutality was used in obtaining the challenged statements and re-enactment.

The semi-starvation point was supported in a negative manner by Police Captain, Joseph Goldberg's testimony of indifference of petitioner's welfare in police custody (Ex. 3, p. 1, n. 2, at p. 31, of Common Law Record; Ex. 3, p. 4, n. 15, at p. 34, of Common Law Record; Ex. 3, p. 1, n. 3, at p. 31, Common Law Record), and by the lack of any testimony as to substantial fare fed to petitioner. One officer did say that petitioner was given one regular meal during the detention other than bologna sandwiches.

The shuttling from station to station was supported by the question on facts of the custody as presented by the prosecutor (Ex. 3, p. 9, n. 27, at p. 39, Common Law Record). [fol. 70] On the question of brutality, Captain Goldberg testified that petitioner's black eye was a result of a "tussle" with him and Officer Perkins (Ex. 3, p. 2, n. 6, at p. 32, Common Law Record; Ex. 3, p. 3, n. 9, at p. 33, Common Law Record; Ex. 3, p. 5, n. 17, at p. 35, Common Law Record; Ex. 3, p. 6, n. 21, at p. 36, Common Law Report; Ex. 3, p. 6, n. 20, at p. 36, Common Law Record) but gave no direct testimony on bruised wrists. Captain Goldberg did testify that at the time of the alleged "tussle", petitioner's handcuff was on one wrist,—the right wrist (Ex. 3, p. 2, n. 6, at p. 32, Common Law Record; Ex. 3, p. 3, n. 10, at p. 33, Common Law Record; Ex. 3, p. 5, n. 17, at p. 35,

Common Law Record; Ex. 3, p. 5, n. 19, at p. 35, Common Law Record).

Officer Perkins supported Captain Goldberg's testimony of the alleged "tussle" (Ex. 3, p. 10, n. 29, at p. 40, Common Law Record), and that at the time of the alleged "tussle", petitioner had a handcuff on the left wrist (Ex. 3, p. 10, n. 29, at p. 39, Common Law Record). Petitioner calls attention to the fact that the police officers disagree on which wrist the handcuff was attached to at the time of the alleged "tussle". Hardly a natural error.

There were no opinions given on how a handcuff attached to one wrist could possibly injure both wrists under the circumstances as testified to and implied by the prosecutor (Ex. 3, p. 9, n. 27, at p. 39, Common Law Record).

Dr. Constantine Theodor, County Jail Physician, testified that on January 11, 1938, petitioner entered the County Jail with a black eye and bruised wrists (Ex. 3, p. 7, n. 24, at p. 37, Common Law Record), and that said bruises could not have resulted from handcuffs alone, "but the way they used the handcuffs" (Ex. 3, p. 8, n. 26, at p. 38, Common Law Record), but that such bruises would be caused by "pressure" exerted on the handcuffs, and that such "pressure" could have resulted from the alleged "tussle" (Ex. 3, p. 9, n. 27, at p. 39, Common Law Record). The doctor gave no opinion on how the handcuffs on one wrist could bruise both wrists and the matter was not called to his attention, nor was it called to the attention of the Court. As the matter now stands, petitioner's contentions of police brutality is supported by his testimony and by his physical testimony, and is illogically controverted by physically impossibility. This one point alone should legally warrant inquiry into the circumstances surrounding the taking of the statements and re-enactment, and it would also be very interesting, from a judicial point of view, to see how the police theory of the bruises could be reconciled to the facts.

4

Petitioner's principal complaint is the most obvious violation of his constitutional rights by the admission into evidence the enforced statements and re-enactments. Use of enforced confessions is contrary to the Federal and State constitutions, and to all the concepts of a free organized democratic society. That the law-enforcing agencies are

prone to use force in obtaining confessions is no well kept secret (See Reports of National Committee on Law Observance an- Enforcement, Wickersham Commission on Lawlessness in Law Enforcement, and 1 American Journal of Police Science, 575).

[fol. 71] In the last ten years the United States Supreme Court has voided many State cases for the use of enforced confessions, among which are Haley v. Ohio, 332 U. S. 596; Malinski v. New York, 324 U. S. 401; Ashcraft v. Tennessee, 322 U. S. 143; Ward v. Texas, 316 U. S. 547; Lomax v. Texas, 313 U. S. 544; Vernon v. Alabama, 313 U. S. 547; White v. Texas, 310 U. S. 530; Canty v. Alabama, 309 U. S. 629; White v. Texas, 309 U. S. 631; Chambers v. Florida, 309 U. S. 227; Brown v. Mississippi, 297 U. S. 278; Ashcraft v. Tennessee, 327 U. S. 274; and the recent triple case Watts v. State of Indiana; Harris v. State of South Carolina; Turner v. Commonwealth of Pen-sylvania; Case No's. 610, 76, and 107, of the October Term, 1948, handed down June 27, 1949.

In the "Watts" case Mr. Justice Douglas, in an concurring opinion, held on the detention in that case:

> "It would be naive to think that this protective custody was less than the inquisition. The man was held until he broke. Then and only then was he arraigned and given the protection which the law provides all accused. Detention without arraignment is a time-honored method of keeping an accused under the exclusive control of the police. They can then operate at their leisure. The accused is wholly at their mercy. He is without the aid of counsel or friends; and he is denied the protection of the magistrate. We should unequivocally condemn the procedure and stand ready to outlaw, as we did in Malinski v. New York, 324 U. S. 401, and Haley v. Ohio, 332 U. S. 596, any confession obtained during the period of the unlawful detention. The procedure breeds coerced confessions. It is the root of the evil. It is the procedure without which the inquisition could not flourish in the country."

In McNabb v. United States, 318 U. S. 332, 63 S. Ct. 608, the United States Supreme Court held that detention alone shut out the confession. This Court upheld the "McNabb

Rule" in Goldblatt v. State of Illinois, 383 Ill. 176, and cases cited therein.

It has always been the rule, in Federal and State courts, that a court exceeding its jurisdiction, loses it and loses the power to render judgment. It has also been the rule that where a court permits the use of, and admits into evidence, an enforced confession, that that court has exceeded its jurisdiction in doing so. And, any conviction and judgment resulting from the use of such enforced statements is void for lack of due process.

In all the cases as cited here in point 4, the United States Supreme Court and this Court has held that the circumstances surrounding the taking of the confessions were violative of constitutional rights. Petitioner's case is in point with all of these cases in that the circumstances surround--- the taking of the statements and re-enactment were all in violation of his constitutional rights (Points 1, 2, and 3 of petition). It follows then, that the trial court violated petitioner's constitutional rights in allowing the use of the enforced statements, and the resultant convictions and judgments are void for lack of due process of law.

[fol. 72] 5

Where the prosecutor and police knowingly use evidence that they know to be illegal and that they, themselves, have obtained in an illegal manner (Points 1, 2, and 3 of petition), and foster that evidence off on the court as valid evidence, they the prosecutor and police are gaining a conviction by fraud and false-pretense. And, where they conseal a known witness to the crime, they are aiding and abetting a conviction by fraud and false-pretense.

It is the police and prosecutor's duty to produce all available witnesses to an overt act. There was no superfluity of witnesses in this case. Only one doubtful eyewitness. The evidence requested by subpoena (p. 4, of petition) would have revealed a witness to the crime that the police and prosecutor knew existed. Therefore, by the police and prosecutor's knowing use of the enforced statements and re-enactment, and by their concealment of a known witness, petitioner was convicted by fraud and falsepretense in violation of his constitutional rights.

6

Counsel for the defense must be more than mere pro forma. In the instant case there was no bail and petitioner was entirely dependent upon his counsel for investigation, preparation, and the presentation of his defence. Petitioner's counsel did none of these thing- in an adequate or competent manner (See point 6, of petition, p's. 20-24, of petition, at p's. 20-24, Common Law Record). Further, petitioner's counsel was out-matched by the People's Ace Prosecutors in demeanor, ability and competence. Therefore, the adequacy of petitioner's counsel did not meet the requirements of due process of law.

7

The physical and mental punishment undergone by petitioner in police custody (See points 1-3, of petition) and the circumstances of and surrounding his conviction (see points 4-6, of petition) and the threat of still further dire consequences should he resist (See Point 7, of petition) so shattered petitioner's will that he was forced to allow his incompetent counsel plead him guilty to the "clincher", Indictment No. 38-46. Your petitioner was in no mental condition to resist further police persecution. Petitioner knew that just as surely as night follows day, so certainly would police and prosecutor's will prevail, and guilt or innocence of no importance in the matter.

[fol. 73] 8 & 9

Points 8 and 9 of the petition were in the relation of the justness of the cause, and the invoking of the Trial Court's jurisdiction and power for relief from illegal imprisonment, under the provisions of the Federal and State constitutions and the Post Conviction Act.

On December 8, 1949, the People filed a Motion to Strike the Petition and Dismiss the Proceedings, for the following reasons:

1. The instant proceeding is not based upon a valid and subsisting statutory enactment, the statute under which this petition is brought (Senate Bill No. 630, passed by the 66th General Assembly of Illinois) being contrary to the State of Illinois Constitution, which provides for separa-

tion of judicial and legislative powers, which invests the Supreme Court of Illinois with final appellate jurisdiction, and which forbids the legislature from adopting special legislation, i.e. legislation which provides for special protection of constitutional rights to one prisoner and not to another.

2. This Court has no jurisdiction to hear matters raised by points 1, 2, 3 and 5 on page 12 of the petition because as to *nisi prius* courts these matters have been finally adjudicated and determined as a matter of law.

3. The contentions of paragraphs 3, 4, 5, 6, 7 and 8 on page 12 of the petition are mere conclusions, unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto.

4. Not confessing or acknowledging all or any of the matters and things in said petition to be true in manner and form as set forth and alleged, the respondent says that the matters and things therein contained, in manner and form as the same are set forth, are not sufficient in law to maintain his action against the judgment, and particularly the matters and things set out in paragraphs 1 through 7 on page 12 of the petition as condensations of the violations of petitioner's constitutional rights do not, as there and elsewhere presented in the petition show a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

(Page 47, Common Law Record)

Point One, of the motion to dismiss concerning the validity of the Post Conviction Act, under which the petition was brought, has been settled by this Court in Dale v. People of the State of Illinois, Docket No. 31411—Agenda 7—May 1950.

[fol. 74] Point Two, of the Motion to Dismiss concerning the jurisdiction of nisi prius courts in the matters contained in points 1, 2, 3 and 5 of the petition, holding that such matters were determinations of law by the court and as such were final, is erroneous in that the said matters come within the spirit, intent, meaning and scope of the Post Conviction Act.

In Armstrong v. Ohucino, 300 Ill. 140, this Court held:

> "The statement has very frequently been made that where a court has jurisdiction of the parties and sub-

ject matter, its decree, however erroneous, can only be attacked on appeal or error; but the rule is subject to an exception equally well settled,—that a decree may be void because the court has exceeded its jurisdiction. - - - Courts are limited in the extent and character of their judgments, and if they transcend their lawful powers their judgments and decrees are void and may be collaterally impeached wherever rights claimed under them are brought in question. The doctrine that where a court has acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds according to the established modes governing the class to which the case belongs and does not transcend in the extent and character of its judgments or decree the law or statute which is applicable to it".

Similar views were held by the United States Supreme Court on the question of "determination of facts" by State courts, in a recent decision handed down by that court in Watts v. State of Indiana, No. 610, October Term, 1948, decided June 27, 1949:

"On review here of State convictions, all those matters which are usually termed issues of fact are for conclusive determination by the State courts and are not open for reconsideration by this Court. Observance of this restriction in our review of State courts calls for the utmost scruple. But "issue of fact" is a coat of many colors. It does not cover a conclusion drawn from uncontroverted happenings, when that conclusion incorporates standards of conduct or criteria for judgment which in themselves are decisive of constitutional rights. Such standards and criteria, measured against the requirements drawn from constitutional provisions, and their proper applications, are issues for this Court's adjudication. Hooven & Allison Co. v. Evatt, 324 U. S. 652, 659, and cases cited. Especially in cases arising under the Due Process Clause is it important to distinguish between issues of fact that are here foreclosed and issues which, though cast in the form of determinations of fact, are the very issues to

review which this Court sits. See Norris v. Alabama, 294 U. S. 587, 589-90; Marsh v. Alabama, 326 U. S. 501, 510."

In the present case, the questions as determined by the trial court were in the nature of illogical conclusions, in violation of constitutional rights, and transcended the character and scope of the court's jurisdiction over such questions. The questions being constitutional in nature and transcending mere error cannot be finally barred from attack by being so autocratically determined by the trial court.

[fol. 75] The said questions, though cast in the form of determinations by the trial court, have never been finally adjudicated by any court. They are therefore in the nature of questions that have never been finally determined, and as such, are open to final determining.

The said questions are effectively barred from proper presentation to this Court on writ of error, as errors of the court, for lack of a bill of exceptions and the questions not appearing on the Common Law Record of the trial proceeding. The questions therefore, being of constitutional nature and within the spirit and meaning of the Post Conviction Act, were proper matters for the trial court's inquiry and within the jurisdiction of the said court. And the said questions, being of constitutional nature and never having been finally determined, are open to collateral attack.

Point Three, of the People's motion to dismiss, contending that the points 3 through 8 of the petition were mere conclusions, unsupported by sufficient evidence or reference thereto, is erroneous in that the said points are constitutional violations. While they may have been overly clarified or inexpertly presented, they were substantial constitutional violations and were amply supported by such evidence as was available to petitioner, and were presented clearly and sufficiently enough to show that petitioner's constitutional rights were in fact denied and violated. Further, the fact that the questions were presented under the Post Conviction Act, within the spirit, meaning, and restrictive provisions of the act, it was the court's duty to consider the effect the violations had on the conviction and not whether they were merely violations or not. That is

the purpose and effect of the act and the purpose and effect of the petition under that act.

Point Four, of the People's motion to dismiss, regarding the sufficiency of the petition in law to maintain the action and the sufficiency therein of the constitutional violations sustained by petitioner, it can only be pointed out that since the founding of our democracy, these same questions have arose in-umerable times. Such violations, where shown to exist, have been held illegal and violative of man's rights under Anglo-American Law. Down through the ages man has had to battle for each and every individual right and the unceasing violation of those rights by overzealous or despotic law enforcing agencies in their devious and evasive methods of contravening those rights. History shows in no uncertain terms that police are prone to abuse the powers entrusted to them. And in every case, brought to attention, where there is evidence showing the violation of these basic rights, the courts have held that inquiry into, and remedy of, those violations, is an inherent or vested right that is secured by the Nation's Charter. Petitioner can cite many many cases, wherein, the showing of constitutional denials and violations, similar to those suffered by petitioner, has voided the trial proceeding and nullified the conviction and judgment. If such recurring questions are not now sufficient in law to maintain an action, man has completely lost his battle to maintain his rights.

[fol. 76] Your petitioner has shown in points 1 through 7 in his petition to the trial court that his constitutional rights were seriously violated in the proceeding that resulted in his conviction and that the said violations were sufficient in law to maintain his action and were substantial enough to warrant inquiry into by the trial court under the provisions of the Post Conviction Act.

On October 11, 1950, the Honorable Frank M. Padden, Judge of the Superior Court of Cook County, Illinois, and Ex-Officio Judge of the Criminal Court of Cook County, Illinois, sustained the People's motion to dismiss and dismissed the petition (P. 62, Common Law Record), as follows, to-wit:

> "This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

"And the Court hearing Counsel in support of the Motion to Dismiss Petition heretofore entered herein in this cause as well as in opposition thereto, and being fully advised in the premises, doth sustain said Motion and orders that said Petition be and the same is hereby dismissed.

"To which order of the Court in sustaining said Motion the said Defendant by his Counsel now here excepts."

From such order of the Court your petitioner files application, via this petition in accordance with Rule 27B of this Court, for Writ of Error Under Post Conviction Hearing Act, in that the Criminal Court of Cook County erred in sustaining the People's Motion to Dismiss and Dismissing the Petition, for the following reasons:

1. That the said petition was based upon a valid statutory enactment.
2. That the Criminal Court of Cook County had the jurisdiction and power under the Post Conviction Act to inquire into and to adjudicate the matters and things set forth in points 1, 2, 3, and 5 of the petition.
3. That the petition was amply founded on factual constitutional violations, however poorly presented, and was amply supported by sufficient and available evidence properly referred to.
4. That the matters and things as set forth in the petition were sufficient in law and in substance to maintain his action, and that the said matters and things as set forht in the petition were substantial denials and violations of petitioner's constitutional rights.

[fol. 77] 5. That the People's Motion to Dismiss, which being in the nature of a standard pro forma answer and not denying the matters and things set forth in the petition, concedes in effect that the said matters and things are founded in fact.

6. That the matters and things as set forth in points 4, 6 and 7 in the petition were sufficient in law and substance to warrant inquiry into.
7. That, under common law practice as established in Criminal Court procedure on petitions under the Post Conviction Act, the original trial judge should have heard the petition.

Conclusion

A prisoner convicted of crime and imprisoned has a "vested" right to open inquiry into the cause and legality of his detention. A right that is guaranteed to him by both Federal and State constitutions, the laws provided thereunder, and at common law. In Illinois, the State Legislature enacted a valid mode of procedure to inquire into and remedy denials and violations of a defendant's constitutional rights in a proceeding that has resulted in conviction and imprisonment. That enactment was in keeping with, and providing for, that "vested" constitutional right. The petition, P. C. #21, filed under that enactment, fulfilled the requirements imposed in the provisions of that enactment. It clearly showed substantial constitutional violations that were undisputed in the Transcript of Testimony. They were, namely, undue detention, prolonged questioning, shuttling from station to station; and the fact that petitioner suffered certain bruises on both wrists and a black eye while in police custody. The only controversy shown in the testimony was in the last aforementioned item, and in relation to the manner in which the said bruises and black eye were inflicted, and the degree of influence used by police in obtaining the challenged statements and re-enactment. The People, in presenting testimony implying that the wrist bruises were inflicted during, or the result of, an alleged "tussle" between petitioner and certain police officers, completely overlooked the physical impossibility of handcuffs injuring both wrists while only attached to one wrist. This one point alone completely nullifies the credibility of the police testimony on how the bruises were inflicted. This one point alone raises the presumption that police brutality was a fact. And as that fact was clearly supported by petitioner's physical condition and by his testimony, his contentions of police brutality stands in effect, undisputed.

In view of these facts, the trial court's blind acceptance of unreasonable police testimony is illogical and unconstitutional, and cannot be considered as reasonable and legally binding within the meaning of due process of law as a final determination of fact. This is also true of the undisputed questions. A court cannot blindly overlook and accept illegal police practices, destructive of constitutional rights,

without question, and as blindly, accept the illegal and invalid fruits of such practices, and allow their use as a basis for conviction and imprisonment.

[fol. 78] The United States Supreme Court held, in "affirmation of common law principles":

> "This protection reaches all alike, whether accused of crime or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain convictions by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights."
>
> Weeks v. U. S. (Mo. 1913) 232 U. S. 392, 34 S. Ct. 341, 58 L. Ed. 652, Ann. Cas. 1915c, 1177 L. R. A. 1915B, 834.

In keeping with those principles, this Court held on "involuntary confession":

> "Confessions extorted by violence, brutality, promise, or unlawful confinement for an unreasonable length of time are illegal and may not be offered or received in evidence against the accused, - - -." (p. 561)
>
> "The court should scrutinize with the utmost care the facts concerning an alleged voluntary confession given to police officers by a defendant while under arrest, and should not deem itself bound by the testimony of the police officers alone, without taking into consideration all of the circumstances surrounding the giving of the alleged confession." (p. 570)
>
> (People v. Tomilson, 400 Ill. 555)

In keeping with these "common law principles" and in keeping with due process of law under the 14th Amendment of the United States Constitution and the Constitution of the State of Illinois, the trial court should have excluded

the enforced statements and re-enactment presented by the police and prosecutor to falsely convict petitioner.

The evidence as in support of the petition has clearly shown that the circumstances surrounding the taking of the statements and re-enactment was clearly in defiance of the rights of the petitioner. And the other evidence requested in the petition via motions and subpoenas would have supported the petition in its entirety had a full and complete hearing been allowed.

Therefore, petitioner acting within his constitutional rights under the 14th Amendment of the United States Constitution, the Bill of Rights as set forth in Article 2, of the Constitution of the State of Illinois, the laws and statutes made and provided thereunder, as well as at common law, holds that in the proceedings in which he was convicted there were substantial denials and violations of his constitutional rights within the meaning of the said constitutions, laws and statutes, and at common law, and that the said denials and violations as set forth in the petition came within the spiritm meaning, scope, and intent of the Post Conviction Act, and that the Criminal Court of Cook County should have ordered a full and complete inquiry [fol. 79] into the matter.

Wherefore, and for the reasons set forth within this petition, petitioner believes that the Criminal Court of Cook County, Illinois, erred in sustaining the People's Motion to Dismiss and Dismissing the Petition, and prays that this Honorable Court will his petition as application in good faith, in accordance with Rule 27B of this Court, for Writ of Error Under Post Conviction Hearing Act, and allow him to file as a poor person, without costs, typewritten copies of the said writ and of the Common Law Record in support thereof.

Respectfully submitted, Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 80] Notice Omitted in Printing

[fol. 81] IN SUPREME COURT OF ILLINOIS

Error to Criminal Court Cook County, P. C. 21

No. 1135

PEOPLE STATE OF ILLINOIS, Defendant-in-Error,

vs.

ARTHUR LA FRANA, Plaintiff-in-Error

ORDER DISMISSING PETITION—March 23, 1951

And now, on this day, the Court having duly considered the motion for leave to file a writ of error under the Post Conviction Hearing Act as a poor person and for leave to file ten typewritten copies of abstract and brief, and being now fully advised of and concerning the premises; doth allow the motion to sue as a poor person. It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition, if requested.

[fol. 82] Clerk's Certificate to foregoing transcript omitted in printing

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[fol. 83] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 481, Misc.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

ORDER GRANTING CERTIORARI—June 4, 1951

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of cer-

tiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 783, now No. 96, October Term, 1951. The case is placed on the summary docket and assigned for argument immediately following Jennings vs. People of the State of Illinois, No. 95.

(6234)

No. 96

No. 96

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 96

ARTHUR LA FRANA,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR PETITIONER

NATHANIEL L. NATHANSON,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Brief for Petitioner	1
Opinion below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
Argument	5
The Illinois Supreme Court erred in holding that the allegations of the petition with respect to the use of coerced confessions did not, as a matter of federal law, set forth a substantial claim of denial of federal right entitling petitioner to a hearing on the truth of the allegations	5
Conclusion	8

Citations

Cases cited:

Ashcraft v. *Tennessee*, 322 U. S. 143	6, 7
Harris v. *South Carolina*, 338 U. S. 68	6, 7
Hauck v. *Olson*, 326 U. S. 271, 278-279	5
House v. *Mayo*, 324 U. S. 42, 45	5
Moore v. *Dempsey*, 261 U. S. 86, 92	5
Sunal v. *Large*, 332 U. S. 174, 182	7
Turner v. *Pennsylvania*, 338 U. S. 62	6, 7
Watts v. *Indiana*, 338 U. S. 49	6, 7

Statutes:

Ill. Rev. Stats. 1949, ch. 38, sec. 826-832	2
Smith-Hurd Ill. Ann. Stats., ch. 38, sec. 826-832 (1950 Supp.)	2
Ill. Rev. Stats. (1949) ch. 38, sec. 660, sec. 664	6
Smith-Hurd Ill. Ann. Stat. (1935) sec. 660, sec. 664	6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 96

ARTHUR LA FRANA,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR PETITIONER

Opinion Below

The Supreme Court of Illinois did not render any opinion, apart from the Order Dismissing Petition for Writ of Error, which is set forth in full at page 71 of the Record. The order reads in part as follows: "It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction

hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition, if requested."

Jurisdiction

The judgment of the Supreme Court of Illinois was entered March 23, 1951. (R. 71). The petition for writ of certiorari was filed April 23, 1951 and was granted June 4, 1951. The jurisdiction of this Court rests on 28 U. S. C. Section 1257(3).

Question Presented

The general question is whether the Illinois Supreme Court erred in holding that there was "no violation or denial of any substantial constitutional rights of the petitioner under the Constitution of the United States" resulting from the dismissal, without a hearing, on the truth of the allegations, of a petition under the Illinois Post-Conviction Hearing Act, which alleged that petitioner had been denied due process of law through use of coerced confessions to secure his conviction. A subsidiary question is whether adjudication of the claim of coerced confession at the original trial is sufficient, as a matter of federal law, to render the issue res judicata in post-conviction proceedings.

Statute Involved

The Illinois Post-Conviction Hearing Act (Ill. Rev. Stats., 1949 Chap. 38, Secs. 826-832; Smith-Hurd-Illinois Annotated Statutes, Chap. 38, Secs. 826-832) is set forth in full in Appendix A in petitioner's brief in *Jennings* v. *Illinois*, No. 95.

Statement

On October 17, 1949, Arthur La Frana, petitioner, filed in the Criminal Court of Cook County a petition for review under the Illinois Post-Conviction Hearing Act. According to the facts set forth in the petition, the petitioner was arrested without a warrant at his home between 5:30 and 7:00 A. M. on December 30, 1937 by two police officers who took him to a police station on the pretext of having him identify a supposed suicide (R. 12). Thereafter petitioner was held in various police stations for eleven days and denied the right to see friends, relatives or counsel until he was finally arraigned in the Criminal Court, on January 11, 1938 on a charge of murder (p. 13). During those eleven days petitioner was fed only bologna sandwiches, got little if any rest, lost twenty pounds and was subjected to intense questioning and physical brutality, until he signed certain statements and participated in a reenactment of the alleged crime (R. 14-15). The exact time of the statements does not appear, except insofar as it is indicated in a question by the State's Attorney during the original trial that the petitioner confessed to certain robberies on December 31, 1937 and later participated in certain transactions, apparently the reenactment, on January 4, 1938 (R. 38-39). These statements and the reenactment were admitted in evidence, over the objections of petitioner's counsel (R. 18). The petitioner was convicted and sentenced for life on the charge of murder. He was also convicted and sentenced for the term of one year to life on the charge of robbery (R. 11).

The petition included a request for subpoenas for certain newspaper files pertaining to one Miss Betty Howard, who had witnessed the robbery but who was not called by the prosecution or otherwise revealed to the defense because she would have testified in petitioner's favor (R. 4, 20); and

also for unretouched photographs from the files of certain newspapers "taken at the Hudson Avenue Police Station in connection with the petitioner prisoner, Arthur La Frana" (R. 5). The petition was also accompanied by an exhibit showing that petitioner had petitioned for and been denied the records of his trial (R. 29, Exhibit 2) and another exhibit consisting of excerpts from the testimony of two of the police officers who had petitioner in custody during the period between arrest and arraignment, and of a doctor who testified regarding his physical condition (R. 30-40, Exhibit 3). One of the police officers testified that he and another police officer had used force to subdue petitioner when he had tried to escape from a washroom upstairs in the police station (R. 31-32, 35-36), and the doctor testified that he examined petitioner when he entered the county jail on January 11, 1938 and found that he had a black eye and bruised wrists (R. 27).

The State's Attorney moved to dismiss the proceeding under the Post-Conviction Hearing Act on the following grounds: (1) that the statute was contrary to the Illinois Constitution; (2) that some of the matters raised had been "finally adjudicated"; (3) that some of the contentions were mere conclusions, "unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto"; and (4) that the matters set forth did not "show a substantial denial of constitutional rights in the proceedings which resulted in his conviction" (R. 43-44). The Trial Court dismissed the petition without, so far as appears, any opinion (R. 54).

Petitioner on March 14, 1951 filed a petition for writ of error in the Illinois Supreme Court (R. 55). On March 23, 1951 that court issued an order dismissing the petition, including therein the statement set forth above (R. 71).

ARGUMENT

The Illinois Supreme Court erred in holding that the allegations of the petition with respect to the use of coerced confessions did not, as a matter of federal law, set forth a substantial claim of denial of federal right entitling petitioner to a hearing on the truth of the allegations.

The petition originating this proceeding contained clear and specific allegations with respect to the illegal detention of the petitioner for a period of eleven days, and the extraction, during that period, of confessions secured by intimidation and brutality (R. 12-14). Even without the aid of the principle that, as against a motion to dismiss, these allegations, made under oath, must be accepted as true, *Hawk* v. *Olson*, 271, 278-279; *House* v. *Mayo*, 324 U. S. 42, 45; *Moore* v. *Dempsey*, 261 U. S. 86, 92, the excerpts from the record of the trial, consisting of the doctor's testimony with respect to petitioner's bruises when he entered the county jail eleven days after his arrest (R. 36-38), and the police officers' testimony with respect to the fight which they said took place in the upstairs washroom of the police station, when petitioner supposedly attempted to escape (R. 31-32, 35-6, 39-40), all lent sufficient credence to petitioner's allegations to require a hearing on their truth. Furthermore, even apart from the physical brutality alleged, the length of time of the illegal detention and persistent questioning leading up to the crucial confession was itself sufficient to establish its involuntary character. In this connection it should be noted that, although there is a suggestion that the first confession was made on December 31st, the day after the arrest, this confession related only to certain robberies and did not satisfy the purposes of the inquisition. It is apparent from the record that the inquisition continued at least through January 4th when the petitioner participated in the reenactment of the crime which was the basis of at

least one of the confessions introduced at the trial (R. 38-41).

The undisputed facts with respect to the illegal detention and persistent interrogation are more than sufficient to bring this case within the principles established in *Ashcraft* v. *Tennessee*, 322 U. S. 143; *Watts* v. *Indiana*, 338 U. S. 49; *Turner* v. *Pennsylvania*, 338 U. S. 62, and *Harris* v. *South Carolina*, 338 U. S. 68. The eleven-day period of illegal detention (Ill. Rev. Stat. (1949), Ch. 38, § 660, § 664; Smith-Hurd Ill. Ann. Stat. (1935) *id.*), during which the petitioner was held without arraignment and without the aid of counsel and friends, exceeded the period involved in any of the above cases; and the seven-day period of intense questioning which elapsed before satisfactory confessions were extracted, is as long as the comparable period in the *Watts* case, and longer than that in the *Ashcraft*, *Turner* and *Harris* cases. Furthermore, the pattern of events and the time sequence is shown not by pleadings artfully drawn in the light of decisions of this Court, but by questions of the State's Attorney and testimony of police officers, set forth in excerpts from the trial record. There is, therefore, no conceivable basis upon which the Illinois Supreme Court could have held that the allegations of the petition and the supporting materials, taken by themselves, did not set forth a substantial claim of denial of federal right within the applicable rulings of this Court.

In view of the substantial case thus made out with respect to the coerced confession issue, here again, as was suggested in the brief for petitioner in *Jennings* v. *Illinois*, the only plausible explanation of the Illinois Supreme Court's ruling on this issue is that it was predicated upon the proposition that since the question had been presented and adjudicated at the original trial, there was no constitutional right to its readjudication by way of collateral attack in the

post-conviction proceedings. The same reasons for rejecting this proposition which were set forth in the brief for petitioner in the *Jennings* case under Point I of the Argument are equally applicable here and are incorporated herein.

The obstacles to appeal in the present case were as real as those in the *Jennings* case. Under Illinois law petitioner could not obtain a transcript of the evidence without paying for it and the transcript was essential for presentation of his constitutional claim regarding the coerced confessions. The significance of the obstacle is attested both by the denial of his petition for a transcript of the record on March, 1948 (R. 29), and also by the following statement in his response to the motion to dismiss: "Since then he has purchased what records as he could afford, but at fifty cents per page the complete Transcript of Testimony, some one thousand papers, is out of the financial reach of his limited earning capacity of some seven dollars per month" (R. 49). It is plain that petitioner is one of those directly affected by the failure of Illinois to provide any means whereby a copy of the transcript of testimony may be obtained by an indigent defendant at the cost of the state, except where the death sentence is imposed.

In addition, it should be noted that the trial and conviction of petitioner took place in 1938, before the decisions in *Ashcraft*, *Watts*, *Turner*, and *Harris*, when the principles applicable to confessions obtained during the period of unlawful detention had scarcely been suggested. There was, therefore, an additional reason for permitting a collateral attack in post-conviction proceeding to present the question. Although a closely divided Court in *Sunal* v. *Large*, 332 U. S. 174, held that a change or clarification of the law was itself not sufficient grounds for allowing collateral attack through *habeas corpus* proceedings, the opin-

ion of the Court expressly excluded from the scope of the ruling any substantial claim of constitutional right. 332 U. S. at 182. Here we have just such a claim, accentuated by the fact that the controlling principles with respect to it were not enunciated until after the time for direct attack through appeal had passed. It is also a claim which can be established on the face of the trial record itself by admissions of the State's Attorney and his witnesses, without consideration of conflicting evidence.

Conclusion

Petitioner is entitled to a hearing on the merits of his allegations with respect to the use of coerced confessions to secure his conviction. Because the Illinois Supreme Court, on the basis of a misconception of federal law, denied him such a hearing, its judgment should be reversed.

Respectfully submitted,

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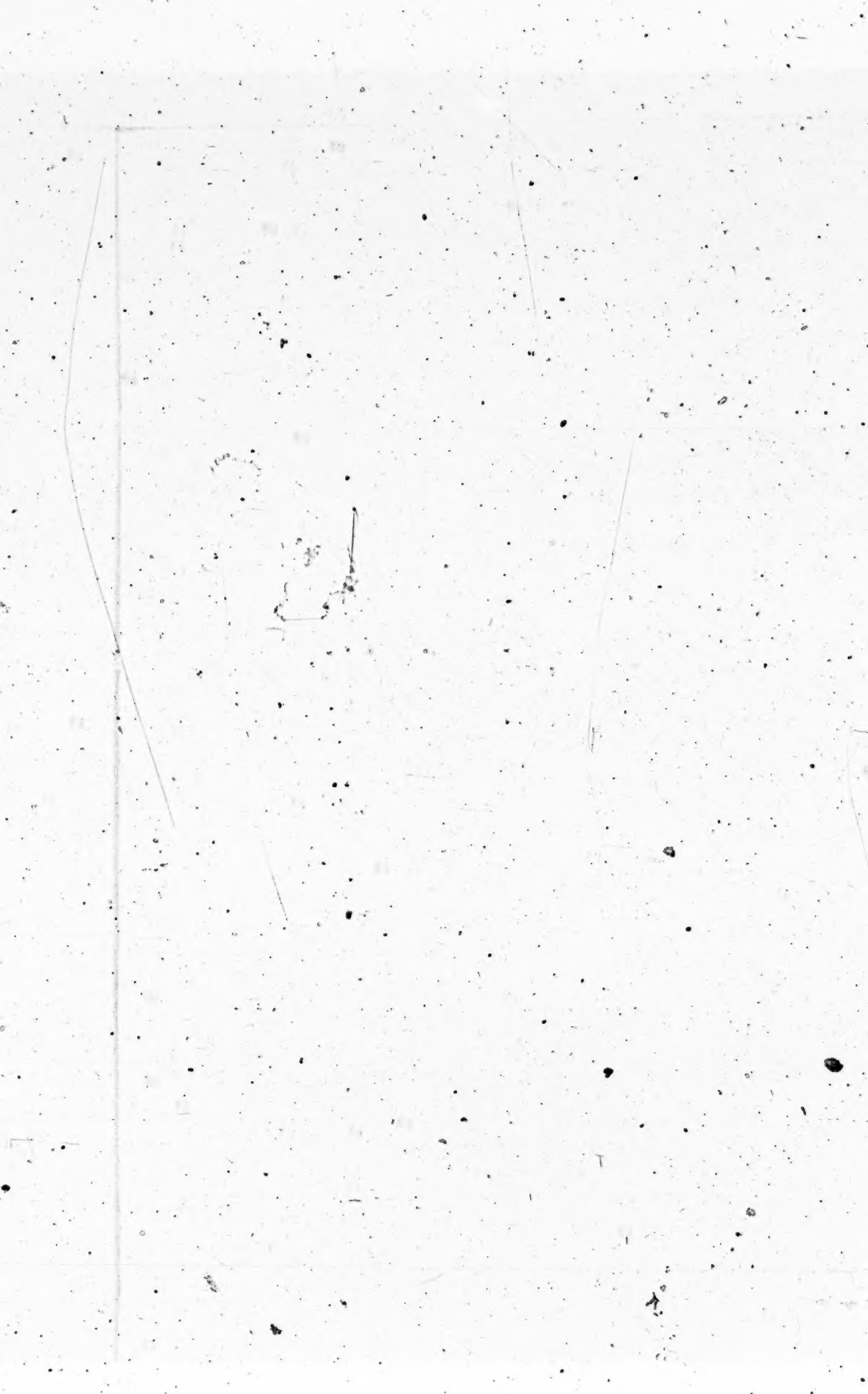

No.

96

LIBRARY
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 96

ARTHUR LA FRANA,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT.

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INDEX.

	PAGE
Argument	5
Opinion Below	2
Respondent's Acceptance of Petitioner's Statement of the Case	2
Summary of Argument	4
The Question Presented	3

Cases Cited.

Hysler v. Florida, 315 U. S. 412	14
Frank v. Mangum, 237 U. S. 309	9
Lisenba v. California, 314 U. S. 219	15
Loftus v. Illinois, 334 U. S. 804	8
People v. Carter, 403 Ill. 567	7
People v. Dale, 406 Ill. 238	6
People v. Green, 355 Ill, 468	8
People v. Loftus, 400 Ill. 432	8
Smith v. United States, 187 F. (2) 192	13
Sunal v. Large, 332 U. S. 174	12
White v. Ragen, 324 U. S. 760	8

Statutes Cited.

Illinois Post Conviction Remedies Act, Ill. Rev. Stat. 1951, Ch. 38, Pars. 826-832	6, 16
Ill. Rev. Stats. 1951, Ch. 38, par. 832, p. 1447	16

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT.

The briefs in Jennings v. Illinois, No. 95, and La Frana v. Illinois, No. 96, are identical.

THE JENNINGS CASE, NO. 95, AND THE LA FRANA CASE, NO. 96, DIFFER ONLY IN THE DETAILS OF RESPECTIVE PETITIONERS' NARRATIVES OF ALLEGED FACTS WHICH ARE CLAIMED TO HAVE RESULTED IN THEIR CONVICTIONS AND IMPRISONMENT WITHOUT DUE PROCESS OF LAW.

IN EACH CASE, THE PETITIONER CLAIMS TO HAVE BEEN CONVICTED UPON AN EXTORTED CONFESSION AND UPON OFFICIALLY SUBORNED PERJURY. (IN THE LA FRANA CASE,

No. 96, the alleged officially suborned perjury consists only in the supposed false testimony that petitioner's confession was voluntary. In the Jennings case, No. 95, it allegedly consists also in false statements as to the facts concerning petitioner's arrest and a search of his home.)

The only question presented is whether petitioner's respective claims are cognizable in this state statutory proceeding, there being no substantial suggestion in either case that petitioner was prevented from asserting his claims in the proceeding culminating in his conviction.

Therefor identical briefs are filed in both cases, the word "petitioner" referring in each case, respectively, to the petitioner in that case.

RESPONDENT'S ACCEPTANCE OF PETITIONER'S STATEMENT OF THE CASE.

Petitioner's counsel has stated the case fully, fairly and accurately. We accept his Statement of the Case without correction or addition.

Opinion Below.

As petitioner's brief correctly states, the Illinois Supreme Court rendered no opinion other than the memorandum and rescript fully and correctly set forth in petitioner's brief. It is not reported.

The Question Presented.

The question presented is:

> DOES THE ILLINOIS SUPREME COURT'S OPINION REST UPON THE ADEQUATE GROUND OF STATE LAW THAT THE ILLINOIS POST CONVICTION REMEDIES ACT DOES NOT AFFORD A MEANS OF ASSERTING MATTERS OF FACT OR CLAIMS OF CONSTITUTIONAL RIGHT THAT WERE OR MIGHT HAVE BEEN PRESENTED IN THE PROCEEDINGS CULMINATING IN PETITIONER'S CONVICTION, IT NOT APPEARING THAT HE WAS PREVENTED FROM ASSERTING SUCH ALLEGED FACTS OR CLAIMS IN THAT ANTECEDENT PROCEEDING?

Properly analyzed, this case presents no question of *res judicata* as opposed to due process of law. The question is whether petitioner's claims, once adjudicated in proceedings intrinsically affording due process, can be asserted *in this purely statutory proceeding*, the purview and ambit of which are delimited by the act creating it as that act has been authoritatively construed by the Illinois Supreme Court.

The Illinois Supreme Court has answered this question in the negative.

The question of permissible latitude of review in Federal post conviction proceedings, such as *habeas corpus* or statutory motion for review, is, we submit, not presented.

SUMMARY OF ARGUMENT.

I.

The Illinois Supreme Court's judgment rests solely upon the ground that Illinois' Post Conviction Remedies Act does not afford an appropriate mode of asserting constitutional claims that were or might have been presented in the proceedings culminating in petitioner's conviction, there being no substantial suggestion that those claims were not and could not have been presented in those proceedings. This is a ground of State procedure, not of Federal constitutional law. Therefore this writ of *certiorari* should be dismissed.

II.

The scope of permissible inquiry upon Federal *habeas corpus* is not an obligatory measure of the scope of inquiry afforded by a purely statutory State proceeding.

III.

Even if the Federal scope of inquiry as to collateral attack on judgments of conviction were the measure of inquiry under this State statutory proceeding, petitioner would not be entitled to a retrial of issues which he litigated or could have litigated at the time of his original conviction.

IV.

If the merits of the case were before the Illinois Supreme Court, then its judgment must still be affirmed because it must be deemed to have weighed petitioner's affidavit as against the evidence and findings in the trial court record and therefore permissibly concluded that petitioner had not "demonstrated" a denial of due process of law.

ARGUMENT.

I.

The Illinois Supreme Court's judgment rests solely upon the ground that Illinois' Post Conviction Remedies Act does not afford an appropriate mode of asserting constitutional claims that were or might have been presented in the proceedings culminating in petitioner's conviction, there being no substantial suggestion that these claims were not and could not have been presented in those proceedings. This is a ground of State procedure, not of Federal constitutional law. Therefore this writ of certiorari should be dismissed.

Petitioner's counsel concedes, with highly commendable fairness and candor, that petitioner's allegations of fact and claims of constitutional rights, *if those alleged facts are cognizable and those claims are justiciable in this proceeding*, make so clear a case of denial of due process that the Illinois Supreme Court's judgment can not rationally be supposed to rest upon a holding that petitioner is justly and duly imprisoned under the Federal constitution even though the averments of alleged fact be taken as true. Therefore, as petitioner's counsel likewise concedes, the Illinois Supreme Court's judgment must have been posited upon the tacit but clear premise that petitioner may not assert these claims in this statutory proceeding.

To phrase this consideration and concession in another way: The Illinois Supreme Court certainly did not hold that a man may be arrested without warrant or probable cause, detained many days *incommunicado*, forced by brutality to confess and suffer conviction on his confession

thus extorted, bolstered by evidence which State prosecuting officials knew to be perjured, all without denial of due process of law under either the Federal or State constitutions. Therefore the Illinois Supreme Court's judgment necessarily rests upon that court's view that petitioner may not assert these claims *in this State statutory proceeding.*

The only authoritative exposition of the Illinois Post Conviction Remedies Act (Ill. Rev. Stats. 1951, Ch. 38, pars. 826-832, pp. 1446-1447) is to be found in *People* v. *Dale*, 406 Ill. 238, which held that Act constitutional but strictly limited its purview to inquiry into constitutional claims that petitioner did not present and could not have presented in the proceeding resulting in his conviction.

The following excerpts from the Illinois Supreme Court's unanimous opinion in *People* v. *Dale* are pertinent (p. 244):

> "The State's Attorney contends that the act does violence to article III of the Illinois constitution because it provides for rehearings and retrials on constitutional issues in causes finally adjudicated; invests power in a *nisi prius* court to set aside its own final judgments regardless of their antiquity, and the final judgments of the Supreme Court. **We do not read such disturbing features into the act and it is not subject to the criticism directed against it in that regard.** It merely provides a procedure by which the judiciary may determine whether or not constitutional rights have been impinged. Should this court, upon a proper record before it, pass upon any given constitutional question in a case, it is not likely the lower court would attempt to overrule or alter the decision. No such power in the lower court is afforded by the act."
>
> "**The remedy provided for under the act cannot be employed to obtain another hearing upon claims of denial of constitutional rights as to which a full and final hearing on the merits has already been had.** * * *"
> (Emphasis supplied.)

Finally, in *People* v. *Dale*, the Illinois Supreme Court makes it clear that the scope of this statutory remedy is,

as is the scope of remedy afforded by Illinois' statutory substitute for the common law writ of *coram nobis*, confined to matters which petitioner *not only did not but could not present at the time of his original trial or plea of guilty.*

In the *Dale* case the court said, at page 245:

> "* * * **The act in question does not provide for the means of refuting or disputing the original findings and judgment or the affirmance thereof,** but it provides for a new proceeding to afford an inquiry into the constitutional integrity of the proceeding in which the judgment was entered. * * *" (Emphasis supplied.)

As thus authoritatively construed by the Illinois Supreme Court, the office of the statutory Post Convictions Remedies Proceeding and the purview of inquiry which it permits become clear: **The Post Conviction Remedies Act inaugurates a purely statutory remedy, which petitioner need not invoke unless he so chooses, and which, when invoked, affords no mode of inquiring into matters of fact or law which were or might have been litigated in the original proceedings culminating in conviction.**

Were petitioner to assert that he was illegally detained, forced to confess, convicted upon perjured testimony, forced to plead guilty, or otherwise denied due process *and were petitioner to couple these assertions with further substantial charge that he was prevented from vindicating or litigating his claims by, for example, want or incompetency of counsel, he being unable effectively to express his claims without counsel, or, for further example, by concealment of the alleged perjury, the Illinois Supreme Court presumably would in petitioner's case, as it has in past cases, take cognizance of these assertions.*

That the Illinois Supreme Court is not deaf to such claims is clear from the following cases: *People v. Carter*, 403 Ill. 567, recognizes *coram nobis* as an appropriate mode

of asserting that petitioner was convicted without due process *and was prevented from obtaining due process by lack of counsel on arraignment,* although the court found the allegations not sustained by the proof.

People v. *Green,* 355 Ill. 468, holds that where convicted defendants are deprived of constitutional right because of want of competent counsel, *coram nobis* is available.

The Illinois Supreme Court's announcement in *People* v. *Loftus,* 400 Ill. 432, rendered pursuant and in obedience to this court's opinion, judgment and mandate in that case (*Loftus* v. *Illinois,* 334 U. S. 804), declares that where a prisoner was convicted by a jury several of whose members had sat on a previous jury convicting him of a similar and cognate offense *and was prevented from claiming his obvious rights by the court's refusal to appoint counsel for him, habeas corpus* would be available. Incidentally, Loftus subsequently brought *habeas corpus* and was discharged.

But the Illinois Supreme Court has held in the *Dale* case, *supra,* that the Illinois legislature did not, by enacting the Illinois Post Conviction Remedies Act, authorize collateral inquiry into a judgment as to matters which, for aught that petitioner alleges to the contrary, he either asserted or might have asserted in the proceedings in which he was originally convicted.

The ambit of jurisdiction and purview of permissible inquiry in a State proceeding are matters of State law even though claims of substantive Federal rights are asserted. *White* v. *Ragen,* 324 U. S. 760.

II.

The scope of permissible inquiry upon Federal habeas corpus is not an obligatory measure of the scope of inquiry afforded by a purely statutory State proceeding.

Petitioner's counsel argues in substance that Illinois' legislature cannot create a Post Conviction Remedy at all unless it creates a remedy equal in latitude with that afforded by Federal *habeas corpus*.

But this Court has held that the *Federal* writ of *habeas corpus* has been enlarged by Act of Congress so as to afford a scope of inquiry unknown to the common law definition that was the basis for the Federal constitutional provisions embodied in the Bill of Rights. (*Franks* v. *Mangum*, 237 U. S. 309.) Therefore, whatever may be the substantive requisites of due process, there is no Federal right to vindicate petitioners' instant claims in a proceeding of which the purview is limited by the State act authorizing it.

We therefore do not in this case reach the question: Is due process afforded when petitioner has been accorded an opportunity to urge in a prior proceeding that due process was afforded, or must the classical concepts of *res judicata* yield to any substantial assertion that in prior proceedings, a claim of denial of due process, though that claim was or might have been fully presented, was wrongly rejected? No such question is presented in this case.

It is evident that all that the Illinois Supreme Court has held is that where an imprisoned Illinois convict raised, or was not prevented from raising, a substantial Federal constitutional question in the proceeding culminating in his conviction, he may not raise that question under the Illinois Post Conviction Remedies Act. Whether he could or could not raise it in a Federal *habeas corpus* proceeding is not before this court in this case.

Petitioner's counsel rightly insists upon a "realistic" appraisal of this case. Such an appraisal must contemplate the following considerations:

Courts sitting in Illinois, both State and Federal, are inundated by a floodtide of petitions in which prisoners seek to relitigate issues of fact, such as questions as to the voluntary or involuntary character of their convictions, as to the veracity of prosecuting witnesses and as to official knowledge of alleged perjury. These petitions nearly always seek retrial of issues decided many years ago. Witnesses have died, memories (except those of the prisoners) have become dim, records of ancient trials are generally not available, and when they are available, do not reproduce the personalities of witnesses, judge and counsel.

Of course the fact that a prisoner may be a desperate criminal does not afford the slightest ground for denying him due process of law. But the Illinois Supreme Court has not held that it does. What that court has held is that the Legislature did not intend to authorize *under this act* retrial of these cases *absent a showing that the prisoner was prevented from fairly asserting his claims in the proceeding that resulted in his conviction, sentence and imprisonment.* This holding goes to the scope of the remedy, not to any ultimate substantive question of Federal constitutional law.

Petitioner points to the practical inadequacy of appellate review in Illinois in those cases, except cases where the death penalty has been imposed, in which a prisoner can not afford a transcript of record. But the Illinois Post Conviction Remedies Act does not cure such inadequacy. In general, stenographic transcripts of testimony, evidence and the judge's charge to the jury are no more available in this proceeding than they would be on a writ of

error. A prisoner's claim of denial of due process at his trial must usually rest upon a reconstruction of the alleged tenor of those proceedings from the subjective recollections of those present at the time of the trial.

In some cases, such as the instant case, it so happens that a stenographic transcript is available. When that is true, it is of course admissible, as it was admitted in the instant case, to show what happened at the trial. This does not mean, however, that if it appears that the trial court erred in applying constitutional precepts to petitioner's case, or that the jury wrongly assayed conflicting evidence, that error can be corrected *in this statutory proceeding*.

The simple truth is that the Illinois legislature has not intended this proceeding as a substitute for writ of error or other conventional mode of appellate review. The Illinois Supreme Court has so held in the *Dale* case. That holding, since it deals with the scope of a State statutory remedy, is conclusive here.

The Illinois Supreme Court's judgment rests solely upon the ground that the instant proceeding, which is wholly statutory, does not afford any means of vindicating petitioner's rights in this case, there being no showing that he was deprived of an opportunity to assert those rights in the proceedings ultimating in his conviction.

Properly understood, this case raises no question of *res judicata* as a substantive doctrine or concept in criminal cases where Federal constitutional claims are asserted. It involves only the scope of inquiry permissible *in this State statutory proceeding*. The scope of inquiry, so long as it is limited by the remedy involved, is a matter of State law.

Of course a State could not, as a plaintiff, force an accused or convicted person into a proceeding, foreclose by

procedural limitations the assertion of Federal constitutional claims, and then make the result *res judicata*. But this proceeding is statutory and permissive. The prisoner who invokes it does so voluntarily and is subject to the limitations inherent in its statutory nature.

III.

Even if the Federal scope of inquiry as to collateral attack on judgments of conviction were the measure of inquiry under this State statutory proceeding, petitioner would not be entitled to a retrial of issues which he litigated or could have litigated at the time of his original conviction.

We have demonstrated that the Illinois legislature was not bound to create a statutory remedy of latitude measured by that of Federal statutory *habeas corpus* or the Federal statutory motion for a new trial or other Federal mode of attack upon a judgment of conviction.

But even if we assume, for the sake of argument only and without conceding, that the State legislature was bound to adopt the purview of Federal statutory proceedings as measuring the scope of State statutory proceedings, that assumption does not aid the petitioner.

Sunal v. *Large*, 332 U. S. 174, is by no means directly in point. But it declaring that the scope of Federal *habeas corpus* today is a statutory enlargement of the common law writ and that it may not in general be invoked as a substitute for appeal. We cite the case as authority for the proposition that even in statutory proceedings brought in Federal courts to attack Federal convictions, where there is no question of the partition of sovereignty between the State and the National government, due process is not denied by foreclosing review *in such statutory* proceedings substan-

tial of admittedly very claims of injustice occurring at the time of the prisoner's conviction.

We particularly commend to the Court the decision of the United States Court of Appeals for the Fourth Circuit in *Smith* v. *United States,* 187 F. (2) 192. The opinion in that case, while of course it is not authoritative here, carefully studies the question of the right of a convicted person to assail collaterally, *via habeas corpus* or statutory delayed motion for a new trial, his conviction on the ground that it resulted from an allegedly coerced confession, perjuriously pronounced voluntary by the testimony of public officials. That court reaches the conclusion that where, as in the instant case, nothing, such as, e. g., mob domination, absence of counsel or suppression or concealment of official subornation of perjury, prevents a fair trial upon the issues of fact, neither Federal *habeas corpus* nor the Federal motion for a new trial is available to the prisoner.

In the instant case, all of petitioner's contentions tender only issues of fact which were controverted at the time of petitioner's trial. In neither case does it appear that petitioner was deprived of a fair trial, by an impartial judge and an unbiased jury, upon those questions of fact.

We therefore submit, *first,* that the scope of the Federal rule does not necessarily measure the scope of the Illinois State statutory proceeding involved in this case and, *second,* that if the Federal rule did measure the scope of the Illinois State statutory proceeding, the Federal rule is correctly conceived by the *Smith* case and would prevent petitioner's instant attempt collaterally to assail his conviction.

IV.

If the merits of the case were before the Illinois Supreme Court, then its judgment must still be affirmed because it must be deemed to have weighed petitioner's affidavits as against the evidence and findings in the record and thereupon permissibly concluded that petitioner had not "demonstrated" a denial of due process of law.

We do not retreat from our insistence that, as conceded by counsel for petitioner, the Illinois Supreme Court's judgment should be read as resting upon the ground, clearly articulated in the *Dale* case, that this State statutory proceeding does not afford petitioner a means of collaterally attacking his conviction upon claims that were or might have been litigated in the proceedings that resulted in his conviction.

But if we assume that the Illinois Supreme Court deemed the merits of petitioner's claims before it in this proceeding, its judgment should be affirmed.

Hysler v. *Florida*, 315 U. S. 411, is directly apposite: In that case, Hysler had been sentenced to death for murder. Four years after his conviction, he brought *coram nobis*, appending affidavits to the effect that he had been convicted upon false and perjured testimony. The Supreme Court of Florida weighed these affidavits against the trial court record, refusing Hysler any oral hearing *de novo* in which he should have the opportunity of summoning witnesses.

This Court held that this disposition of the case accorded due process. This Court said that a State court may require something more than affidavits uncontradicted in the Post Conviction proceeding before granting a rehearing if the record in the original trial substantially contradicts

those affidavits and leaves the State court satisfied that substantial justice has been done.

> "* * * The Court had to judge the substantiality of this claim on the basis of all that was before it, namely, the petition with its accompanying affidavits and the records of prior cases arising out of the same crime. The Court concluded that Hysler's proof did not make out a *prima facie* case for asking the trial court to reconsider its judgment of conviction. However ineptly the Florida Supreme Court may have formulated the grounds for denying the application, its action leaves no room for doubt that the Court deemed the petitioner's claim without substantial foundation. * * *"

Lisenba v. *California*, 314 U. S. 219, is also in point. The *Lisenba* case was here on two consolidated writs of *certiorari*, one to review the Supreme Court of California's affirmance of petitioner's conviction on direct appeal under the laws of that State and one to review denial of petitioner's application for *habeas corpus*. That application, like the instant applications under Illinois Post Conviction Remedies Act, asserted by affidavits *dehors* the original record of conviction that petitioner had been convicted upon an extorted confession and perjury.

No trial was granted, nor was oral evidence received, on the *habeas corpus* proceeding.

This Court affirmed both the original conviction and the refusal to entertain collateral attack upon it *via habeas corpus*, approving the California's court's appraisal of the affidavits and their contradiction by the record of conviction.

If the Illinois Supreme Court, tacitly overruling its limitation of the scope of the act by the *Dale* case, can be deemed to have entertained this petition on its merits, then it also must be presumed to have weighed the petition as against the trial court record and found it insufficient to entitle the petitioner to what would in effect be a new trial.

Section 6 of the Illinois Post Conviction Remedies Act (Ill. Rev. Stats. 1951, Ch. 38, par. 832, p. 1147) is as follows:

> "The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge may be necessary and proper."

It must therefore be presumed that if this proceeding was appropriate under State law, then both the trial court and the Supreme Court of Illinois assayed petitioner's affidavits in counterpoise against the evidence taken at the time of his trial and permissibly concluded that petitioner had not, as a matter of fact, demonstrated any trial of due process in the proceedings culminating in his conviction.

Conclusion.

For the reasons suggested in this brief, we respectfully submit that the writ of *certiorari* should be dismissed because no Federal question is presented.

Respectfully submitted,

IVAN A. ELLIOTT,
Attorney General of the State of Illinois,
Suite 900, 160 N. La Salle Street,
Chicago 1, Illinois, FInancial 6-2000,
Attorney for Respondent.

WILLIAM C. WINES,
RAYMOND S. SARNOW,
JOHN T. COBURN,
Assistant Attorneys General,
Of Counsel.

No.

375

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 375

JULIUS BERNARD SHERMAN, PETITIONER,

vs.

JOSEPH E. RAGEN, WARDEN OF ILLINOIS STATE PENITENTIARY

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR CERTIORARI FILED JUNE 9, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 375

JULIUS BERNARD SHERMAN, PETITIONER,

vs.

JOSEPH E. RAGEN, WARDEN OF ILLINOIS STATE PENITENTIARY

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

INDEX

	Original	Print
Proceedings in Supreme Court of Illinois	1	1
Caption (omitted in printing)	1	
Notice of motion for writ of error (omitted in printing)	2	
Petition for writ of error	3	1
Record from Criminal Court of Cook County	9	4
Motion for leave to file as a poor person	9	4
Petition for relief under Post Conviction Act	11	5
Motion to strike and dismiss	21	15
Motion of petitioner to quash respondent's motion	22	16
Amended petition	25	17
Amended motion to strike and dismiss	28	19
Order dismissing petition	30	20
Clerk's certificate (omitted in printing)	32	
Clerk's certificate	34	21
Order granting leave to proceed in forma pauperis	35	21
Order granting certiorari	35	22
Order dismissing petition for writ of error	33	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 15, 1951.

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[fol. 1] **IN THE SUPREME COURT OF ILLINOIS**

[Caption omitted]

[fol. 2] Notice of Motion for Writ of Error (Omitted in Printing)

[fol. 3] IN THE SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error

vs.

JULIUS BERNARD SHERMAN, Plaintiff in Error

PETITION FOR WRIT OF ERROR, TO THE CRIMINAL COURT OF COOK COUNTY UNDER THE POST-CONVICTION ACT—Received March 22, 1951.

To the Chief Justice and the Associated Justices of the Supreme Court of Illinois:

Comes now Julius Bernard Sherman, and prays this Honorable Court for relief from a judgment order of conviction and sentence rendered thereon out of the Criminal Court of Cook County, Illinois, on October 29, 1947, under indictment Nos. 47-548, 47-549, entitled People of the State of Illinois, plaintiff, vs. Julius Bernard Sherman, defendant, wherein the defendant was found guilty by the above named Court without a jury, and he was sentenced to 30 years in the Illinois State Penitentiary at hard labor.

This action is a purported Petition for Writ of Error under the provisions of the Illinois Post-Conviction Act (Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949) seeking review by this Court of an adverse judgment order rendered against the plaintiff in error in the above entitled cause, out of the Criminal Court of Cook County, Illinois, on Feb. 15, 1951, and known as Post-Conviction Case No. 88.

Opinion Below

The Criminal Court of Cook County, Illinois, rendered no opinion.

Its order on Feb. 15, 1951, dismissed the plaintiff in error Petition for Relief under the Post-Conviction Act on the motion of the State to strike the Petition and the Court entered an order dismissing the Petition on the grounds of failure

to constitute a s..owing of a substantial denial of the plaintiff in error Constitutional Rights in the trial which resulted in his conviction.

[fol. 4] The plaintiff in error in the instant case respectfully presents unto this Honorable Court that he is being held, detained and otherwise restrained of his liberty in violation of his Constitutional Rights which were denied him during his trial which resulted in his conviction as set forth in following:

Statement of the Case

On October 29, 1947, your petitioner, together with a codefendant by name of Edgar Williams, was tried and convicted by the Court without a jury trial having been waived, on two separate indictments (Indictment No. 47-548, charged Murder and Indictment No. 47-549 Robbery).

Petitioner was sentenced to two concurrent terms of thirty (30) years on the murder charge and ten (10) years to thirty (30) years on the robbery charge.

Honorable John F. Haas, Trial Judge.

Contention of Petitioner

Petitioner contends that he was deprived of his liberty and freedom in violation of the "due process of Law" clause and denied "the equal protection of the Laws" fundamental rights guaranteed him by the Fourteenth Amendment to the Constitution of the United States in the proceedings on October 19, 1947, which resulted in his conviction, by reasons as follows:

(1). He was denied the right to a fair and impartial trial, and was convicted on perjured evidence submitted on the State's behalf.

(2). He was convicted on perjured testimony given by witnesses for the State, whom had been bribed by State Officers to testify falsely against petitioner at the trial.

(3). He was denied the right to have witnesses to testify in his behalf at the trial.

(4). He is now being held illegally and unlawfully on false charges of which he is not guilty of committing; and makes a prima facie case of restraint of his liberty and freedom without "due process of law" in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 5] Questions Presented

(1) Whether the Petition For Relief under the Post-Conviction Act made a sufficient showing of deprivation of liberty in violation of the Fourteenth Amendment to the Constitution of the United States to entitle the plaintiff in error to redress by the Criminal Court of Cook County.

(2) Whether this Court should vacate the order of the Criminal Court of Cook County, Illinois, dismissing the Petition For Relief, and *and* pass itself upon the merits of the plaintiff in error petition for Relief.

Statement to This Court

This Court is familiar with the provisions of the Post-Conviction Act. Ch. 38, Sec. 826-832, Ill. Rev. Stat., 1949.

In his petition For Relief to the Criminal Court of Cook County, the plaintiff in error in the instant case, alleged that substantial rights under both the Constitution of the United States and the Constitution of Illinois have been violated in the proceedings which resulted in his conviction.

If it might be permissible, plaintiff in error will dispense with argument on the merits of his alligations and in lieu of argument, he hereto attaches a copy of his original Petition For Relief (Post-Conviction Case No. 88). In the said Criminal Court of Cook County to this Pet-tion for Writ of Error, in order that this Court may pass upon the questions presented to this Court.

See Exhibit No. 2.

Wherefore, the plaintiff in error herein moves that this Court issue an order commanding that the Criminal Court of Cook County produce all the records in cause No. 47-548, 47-549, and all the Records and Matters relating to that cause before and after, in order that this Court may proceed in a summary manner to determine whither the allegations set forth by him in his Petition For Relief merits a determination by this Court under the pro-isions of law as in such case made and provided pursuant to the Illinois Post-Conviction Act.

Respectfully submitted, Julius B. Sherman, Plaintiff in Erroe.

[fol. 6] *Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.*

[fols. 7-8] Motion of Service omitted in printing.

[fol. 9] IN THE CRIMINAL COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS, ex Rel. JULIUS BERNARD SHERMAN, Petitioner,

vs.

CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS, Respondent

Petition for Relief as Made and Provided Under the Post-Conviction Act. Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949

To The Honorable Chief Justice of the Criminal Court of Cook County, State of Ilinois:

MOTION FOR LEAVE TO FILE PETITION FOR RELIEF AS A POOR PERSON, WITHOUT PAYMENT OF COST, UNDER PROVISIONS OF THE POST-CONVICTION ACT—Received July 25, 1950

Now comes Julius Bernard Sherman, appearing pro se, and respectfully shows to the Honorable Court that he is the petitioner in the above entitled cause; that he is a citizen of the United States; that he is now illegally and unlawfully imprisoned in the Illinois State Penitentiary, Stateville Branch, located near Joliet, County of Will, State of Illinois, by virtue of process issued pursuant to a conviction obtained against him on October 29, 1947, in the Criminal Court of Cook County, State of Illinois.

Wherefore Julius Bernard Sherman, petitioner, in this behalf moves this Honorable Court for leave to file this petition for Relief under the general provisions of the Post-Conviction Act of Illinois, Ch. 38, Sec. 826-832, Illinois Rev. Stat. 1949, that he believes he has a meritorious cause for such action and is entitled to the redress he seeks; that he is a poor person without sufficient funds to pay the costs of this proceedings or give security therefor; that he be appointed competent counsel to prosecute this cause for him; and that he be allowed to prosecute this cause to a conclu-

sion as a poor person pursuant to the statute in such cause as made and provided.

[fol. 10] Petitioner will ever pray.

Respectfully submitted, Julius B. Sherman, Petitioner pro se:

Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.

(Received endorsement omitted.)

[fol. 11] IN THE CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS

[Title omitted]

ORIGINAL PETITION FOR RELIEF UNDER THE POST-CONVICTION ACT. CH. 38, SEC. 826-832, ILL. REV. STAT. 1949—Received July 25, 1950

Your petitioner Julius Bernard Sherman, appearing pro se, prays for relief under the specific provisions of the Post-Conviction Act of Illinois, approved August 4, 1949; Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949.

The said Act vests power and authority in this Court to issue process to vindicate rights, where it is made to appear that a substantial right guaranteed under the Constitution of the United States, or under the Constitution of the State of Illinois, or both, have been violated or denied the accused in the proceedings which resulted in his conviction.

Statement of the Case

On October 29, 1947, your petitioner, together with a co-defendant by name of Edgar Williams, was tried and convicted by the Court without a jury, jury trial having been waived, on two separate indictments (Indictment No. 47-548, charged Murder and Indictment No. 47-549 Robbery).

Petitioner was sentenced to two concurrent terms of thirty (30) years on the murder charge and ten (10) years to thirty (30) years on the robbery charge.

Honorable John F. Haas, Trial Judge

Contention of Petitioner

Petitioner contends that he was deprived of his liberty and freedom in violation of the "due process of law" clause and denied "the equal protection of the laws," fundamental rights guaranteed him by the Fourteenth Amendment to [fol. 12] the Constitution of the United States in the proceedings on October 19, 1947, which resulted in his conviction, by reasons as follows:

1. He was denied the right to a fair and impartial trial, and was convicted on perjured evidence submitted on the State's behalf.

2. He was convicted on perjured testimony given by witnesses for the State, whom had been bribed by State Officers to testify falsely against petitioner at the trial.

3. He was denied the right to have witnesses to testify in his behalf at the trial.

4. He is now being held illegally and unlawfully on false charges of which he is not guilty of committing, and makes a prima facie case of restraint of his liberty and freedom without "due process of law" in violation of the Fourteenth Amendment to the Constitution of the United States.

Jurisdiction

Petitioner now sues out this petition seeking relief from what he deems an illegal and unconstitutional imprisonment, and invokes the jurisdiction of this Court under the express provisions of the Post-Conviction Act, Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949, to issue process to vindicate the violation of his rights guaranteed by the United States Constitution.

The State's Case

Petitioner points out here that the facts in cause No. 47-548 constitutes the facts in Cause No. 47-549.

Petitioner further shows the Court that there was a third person named in connection with these charges by name of Willie Franklin.

He was tried separately and apart from Williams and petitioner; was convicted and received a sentence of one to two years imprisonment.

Williams received a sentence of "Life" imprisonment for murder and a term of ten (10) years to life on the Robbery charges.

In cause No. 47-548, the State charges that petitioner, with co-defendant Edgar Williams, murdered one George Bloom, on January 10, 1947, about 9:45 A.M. in a liquor store owned by him, known as the Tulane Liquor Store, located at 4711 Calumet Avenue, Chicago, Illinois, during a Robbery (Cause No. 47-549) in which $10.00 was taken from the cash drawer.

There was supposed to have been one eye witness to the crime and he was a colored fellow by the name of Hun Lee Booker, a porter employed in said liquor store and was said to have been at work in the store at the time of the murder and robbery.

Hun Lee Booker, State's witness testified in Court that, on January 10, 1947, he and Mr. George Bloom, the slain man and proprietor were the only persons in the liquor store when two men came into the said liquor store about 8:30 A.M. and said "All right this is a stick up."

[fol. 13] Booker, at this point of his testimony pointed out Williams and petitioner as the two robbers.

He placed his and Mr. Bloom's location behind the counter near the rear of the store.

Booker further testified that Williams stuck his gun in his face and ordered him (Booker) not to move, and in the meantime Mr. Bloom walked in the rear of him (Booker) going to the back part of the store and then Williams ordered him (Booker) to join Mr. Bloom, and proceeded to march the two of them to the rear of the store with him (Booker) leading the way and Mr. Bloom following him.

At this point of Hun Lee Booker's testimony counsel for petitioner, questioned Booker, as to where were his eyes while he was walking to the rear of the store, and this witness stated that he was looking directly at Williams, because Williams was pointing his gun directly into his face.

Booker further testified that when they got near the icebox in the store, Mr. Bloom reached for a bottle to hit Williams with, and Williams shot Mr. Bloom then.

This witness further stated that after Mr. Bloom was shot, he (Booker) grabbed Mr. Bloom, and slipped, and while on his knees begged the gun man not to shoot him too.

Again petitioner's attorney interrupted Booker and questioned him concerning what petitioner was doing while all

this was going on and witness stated that petitioner jumped over the counter and hit the cash-register.

At this point Booker readily admitted under questioning that he did not see petitioner hit the cash-register but, he heard the Cash-Register ring.

To this answer, petitioner's lawyer asked Booker, whether he got a good look at petitioner and the witness answered a direct "No".

Furthermore, Booker was asked by petitioner's attorney whether he was being paid to testify in this case against petitioner and the witness answered "Yes".

Another witness for the State was a Miss Classie Mann, the sweetheart of Willie Franklin, and referred to by the State's Attorney after the trial had begun as a "surprise witness."

This "surprise witness" testimony was irrelivant to the cause and is due to be severely criticised.

Miss Mann testified in behalf of the State that on the 10th day of January 1947, petitioner came by her home to pick up Willie Franklin.

In the face of this assertion of hers under oath, she readily admitted that she did not know petitioner's name (having learned it on the second day of the trial) nor did she see petitioner's face.

She claimed to have seen only the top of petitioner's head and the clothing he was wearing.

[fol. 14] Under cross-examination by petitioner's attorney, she too, admitted being paid money (U. S. Currency) by Police Officers of the City of Chicago, Illinois, to testify against petitioner.

When further questioned on this point, concerning the identity of the Police Officers who were paying her, unhesitatingly and unshamed, Miss Mann pointed her finger toward a table in the courtroom where two police officers were seated and pointed them out as the persons paying her, and called them by their names.

Concerning this fact, petitioner's attorney prevailed upon said "surprise witness" and had her to repeat this statement four times, whereupon he (attorney) inquired of the Court Reporter whether he recorded this statement as a matter of record, to which the court reporter answered in the affirmative.

Petitioner's Case

Your petitioner, Julius Bernard Sherman, was arrested at his place of employment, the W. F. Hall Printing Co., located at 4600 W. Diversy Blvd., about 8:30 P.M. on March 6, 1947, by four (4) Police Officers and was taken to the 48th Street Police Station, and detained therein on an open charge.

When arrested, petitioner demanded the reason for his arrest and was told by the Police that he was wanted as an accomplice to one Willie Franklin, concerning a Murder and Robbery which had been committed.

Petitioner denied complicity in said crime and also denied knowing this person or any person by the name of Willie Franklin and demanded to be shown him.

These Police officers claimed that they already had the said Willie Franklin in custody and further claimed that he had been, under arrest more than two weeks, but for some reason unknown to petitioner, Willie Franklin was not brought face to face with petitioner until about four (4) days after petitioner's arrest. (March 10, 1947.)

Petitioner states that during these four days, he was brutally beaten by the police officers with blackjacks and clubs and kicked with their feet in effoorts to make petitioner confess to these accusations.

On March 10th, 1947, or thereabout, when petitioner was brought face to face with him, Willie Franklin told the police that he did not know petitioner.

Whether he told them a different story afterwards is beyond petitioner's knowledge.

On the third night after his arrest, petitioner was compelled to make a private "show-up" in the 48th Street Police Station, before a white man and a colored man.

These two people did not identify petitioner as being the perpertrator of any crime against either of them, but, the police told them that petitioner was one of the men who helped to rob them and killed their boss.

The identity of these two men, petitioner learned afterwards were; The colored man was Hun Lee Booker, a porter employed at the Tulane Liquor store 4711 Calumet Avenue, Chicago, Illinois, and was supposed to have been in said store on January 10, 1947, with George Bloom, when two (2) fellows are supposed to have entered the liquor store about 8:45 A.M. on said day with drawn revolvers, and

ordered Mr. Bloom and said Hun Lee Booker to put up their hands. It is claimed that Mr. Bloom refused to obey the gunmen command and was shot to death by one of the robbers.

[fol. 15] Petitioner points out here again to this Court, that the porter Hun Lee Booker, could not and did not identify petitioner as one of the gunmen at this private show-up, as being one of the participants in said crime, and Hun Lee Booker was supposed to have been the sole eye-witness capable of identifying the robbers and the killers of George Bloom.

It was the police officers who pointed out petitioner as being one of the criminals in this heinous crime.

Petitioner further states that the brutality of the police officers did not stop after this "phony accusation."

They doubled their efforts and continued to beat and abuse petitioner for three more days trying to make him confess to the said crime, and also they continued to hold him on open charges and denied petitioner the right to call an attorney nor would they permit friends and relatives to see him.

On the seventh day after his arrest, petitioner, Williams and Willie Franklin were removed from the 48th Street Police Station and given a lie detector test. This said "Lie Detector Test" completely exonerated petitioner with any complicity in the crime alleged.

After the "Lie Detector Test" petitioner was returned again to the 48th Street Police Station, and then permitted to see friends for the first time since his arrest, seven days before.

Petitioner further states that on the seventh day after his arrest, Hun Lee Booker, the porter, and Harold Bloom, son of the slain man (George Bloom) whom was murdered on January 10, 1947, were summoned to the 48th Street Police Station, to listen to the reading of a purported confession, petitioner, Williams and Willie Franklin were supposed to have made, after seven days of unmerciful beatings and other brutalities by the police officers inflicted on the three suspects.

Your petitioner contends that this "so-called confession" on his part is phony and not true.

He points out to the Court that typed at the bottom of this "Phony confession" are his words as follows: (quote)

"I would rather not sign that confession, because it is not true."

He further shows this Court, that this fact and mention of the notation was revealed in court during his trial and is a part of the Record of the proceedings.

Petitioner further points out to this Court that after he was named in a warrant charging him with complicity in these crimes, and after he was transferred to the Cook County Jail to await Grand Jury action, he was examined by the Doctor of said jail who made notes of his condition and said Doctor found that petitioner had been beaten severely, with black and blue bruises covering the greater portion of petitioner's body.

This Doctor was subpoened to testify during the trial, and he described the condition of petitioner when he was committed to the Cook County Jail, and this Doctor revealed in open Court that petitioner had been brutally beaten. [fol. 16] This fact too, is a matter of record and can be found in the Transcript of the proceedings.

It was approximately after his arrest before petitioner was placed on trial.

Having appeared nine times before the Honorable Judge Roberts, who refused to try the case, because it "stunk", according to his version of the charge against petitioner; and he sent the case back to the Chief Justice, who assigned it to the above said Honorable John F. Hass, named herein and of Record as the Trial Judge.

May petitioner point out here, that after the trial got under way, he sat in the courtroom two days before his name was mentioned in connection with the proceedings, and then it was upon the inquiry of the Judge presiding, when he asked what part did petitioner play in the crime.

Thereupon, the prosecutor arose before the Court and stated that the State had a "surprise witness" to testify against petitioner.

Then the Court ordered and demanded of the prosecutor that this "so-called surprise witness" had better be produced in open court the following morning, or else he (Judge) was going to "throw" the case out of his courtroom.

True enough in compliance with the Court's edict, the prosecutor produced a woman, supposed to be the "surprise Witness", who is identified as Miss Classie Mann, the sweetheart of Willie Franklin and she testified under oath that she was being paid money (U. S. Currency) to testify against petitioner, and she pointed out the police officers who were present in the courtroom as being the persons paying her to testify.

Also this fact and her testimony is a matter of Record.

Petitioner contends that it was upon the bribed testimony given by Miss Mann and Hun Lee Booker, in other words their perjured testimony that he was convicted.

Petitioner states that he had never seen Miss Mann before in his life until that day in court when she was put on the Witness Stand as a witness for the State and against him.

Furthermore, that portion of her testimony asserting that petitioner came by her home on the morning of the alleged crime to pick up Willie Franklin is false and untrue and makes a prima facie case of perjury on the part of Miss Mann.

Petitioner further shows and points out to the court that the porter Hun Lee Booker, also testified that he was being paid for his part in the case.

Furthermore his testimony was so full of discrepancies and of such a contradictory character that it was plain and easy to see that he was being influenced by some person or persons and was given purjured testimony.

For instance, Booker testified in sum and substance that he did not get a good look at the man who took the money from the cash register, because the gunman who shot Mr. Bloom had him engaged.

[fol. 17] But it was the police officers theory that it was petitioner that took the money, and they paid Willie Franklin to say so.

Petitioner further states that he was the victim of su-prise on the part of State officers, because he was not definitely notified and informed when he was going to be tried.

Petitioner states that he was secretly placed on trial without an opportunity afforded him to notify his witnesses; therefore by such illegal and unconstitutional tactics practiced by State officers, he was deprived of a valid defense which probably would have established his innogence.

Referring to the evidence given by Hun Lee Boocker, where he testified that he was bribed to testify, may petitioner point out to this Court that the discrepancies and self-contradictions in his testimony establishes the fact that petitioner's conviction and present imprisonment is due to police influence; for instance, petitioner was pointed out to Hun Lee Booker by police officers as being one of the alleged robbers, and Hun Lee Booker was paid by said officers and told to testify to that effect, which was deliberate perjury.

Petitioner contends that he is completely innocent and not guilty of the charges and is now falsely imprisoned which constitutes restraint of his liberty without "due process of law" in violation of the Fourteenth Amendment to the United States Constitution.

Prior Litigation by Petitioner to Secure Relief

In ——, 1948, petitioner filed an original petition for a Writ of Habeas Corpus in the Criminal Court of Cook County, Illinois raising substantial questions under the "due process of law" clause of the Fourteenth Amendment.

In ——, 1949, the court denied the petition on the motion of the State's Attorney of Cook County, without holding a hearing and inquiring into the truth or falsity of petitioner's allegations.

Under Illinois law orders of a court denying petitions for Habeas Corpus are not subject to appellate review.

Petitioner then filed a petition for writ of certiorari in the United States Supreme Court, and he also sent a copy of his petition for writ of Habeas Corpus to that court for its consideration of the facts therein. (Docket No. 372 Misc., Sherman v. Ragen, U. S. Sup. Ct. October Term 1948.)

Certiorari was granted and the order of the Criminal Court of Cook County denying the petition was vacated, and by mandate of the United States Supreme Court, the case was sent back to the Criminal Court for hearing. (See: Young v. Ragen, — U. S. —.)

The United States Supreme Court in its opinion handed down on June 6, 1949, (Young v. Ragen) stated, *"as in other cases, we wish to be advised, if a hearing is again denied."*

The Criminal Court of Cook County, Illinois, on remandment of the case, appointed Mr. Edward Rothschild and Mr. Paul Stevens, attorneys to represent petitioner.

After vigorous and extensive arguments by these es-
[fol. 18] teemed attorneys in behalf of petitioner, the petition was again denied by Chief Justice Lynch in November 1949, without holding a hearing into the truth or falsity of petitioner's allegations.

The petition was dismissed on the ground that habeas corpus was not the proper remedy in said case.

Thereupon, in accordance with the Supreme Court of the United States opinion, and certain statements in Young v. Ragen, Attorneys Rothschild and Stevens, prepared and filed a petition for certiorari in the United States Supreme Court on January 29, 1950.

In the petition for certiorari the Court was advised of the conflicts in certain Courts of Illinois concerning the constitutionality of the Illinois Post-Conviction Act, approved August 4, 1949, and the United States Supreme Court was requested to withhold action on the petition for certiorari until a certain case was decided (People v. Dale) challenging the validity of said Act.

In May, 1950, the Act was declared constitutional by the Illinois Supreme Court, thus adopting a post-trial remedy for the relief of denials of due process.

Conclusion

This Court is familiar with the provisions of the Illinois Post-Conviction Act, Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949.

Your petitioner has alleged and set forth facts describing and showing denials and violations of substantial rights, privileges and immunities under both the Constitution of the United States and the Constitution of the State of Illinois in the proceedings which resulted in his conviction in the Criminal Court of Cook County, Illinois on October 29, 1947.

Wherefore, it is respectfully prayed that relief be granted under the general provisions of the Post-Conviction Act, and that petitioner have his day in court and the vindication of the protected guarantees of both State and Federal Constitutions.

Petitioner further prays that this court issue an order of subpoena duces tecum commanding all the Records, a complete transcript of the record and all proceedings had therein of this cause (No. 48-548, 48-549) produced in this

Court for review and determination, because of petitioner's lack of funds to procure them, as made and provided by provisions of the Post-Conviction Act.

It is prayed that petitioner may have such other and further relief in the premises as this Court may deem proper in order that law and justice may prevail.

Respectfully Submitted, Julius B. Sherman, Petitioner Pro Se., Box 1112, Joliet, Illinois.

[fol. 19] *Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.*

[fol. 20] Notice of Service of Copy of Petition (Omitted in Printing).

[fol. 21] In the Criminal Court of Cook County

[Title omitted]

Motion to Strike and Dismiss

Now comes the respondent, People of the State of Illinois, by John S. Boyle, State's Attorney of Cook County, Illinois, and respectfully moves the Court to strike the petition filed herein and to dismiss the proceeding for the following reasons:

1. Petitioner is barred from obtaining relief on the grounds alleged in his petition for the reason that the claims were conclusively adjudicated in full hearing to petitioner and decided against him, the claims therefore being res judicata and not within the jurisdiction of the Court to hear or to use as a basis for granting petitioner relief.

2. The allegations of a denial of petitioner's constitutional rights are mere conclusions, unaccompanied by affidavit of facts or documentary evidence having possible probative force sufficient to require an answer or hearing on any issue of denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

3. The facts alleged by petitioner would not, if true, constitute a showing of a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

Wherefore, respondent prays judgment that the petition be striken and the proceeding be dismissed, or, in the alternative, for time to answer.

People of the State of Illinois; John S. Boyle, State's Attorney of Cook County; Charles W. Corcoran, Assistant State's Attorney.

[fol. 22] In the Criminal Court of Cook County

[Title omitted]

Motion to Quash—Received August 29, 1950

Now come the petitioner, Julius Bernard Sherman, and respectfully states to this Honorable Court, that he is the petitioner in the above entitled cause now pending action in this Honorable Court, August 3, 1950. Whereas he (petitioner), now respectfully moves the Court to strike, and quash the motion entered on August 17, 1950, by the States Attorney, John S. Boyle, for the People of the State of Illinois, against the above entitled cause, for the following reasons;

1. The allegations as set forth in the petition of the above entitled cause, is based on; Denial of a fair and impartial trial, and confinement without due process of law in violation of the 6th, and 14th Amendments of the Constitution of the United States of America, and Section 2, and 9, of the Constitution of the State of Illinois, whereas the requirement is, that no person shall be deprived of his life, liberty, or property, without due process of law, nor shall any person be denied the equal protection of the law.
2. The brief, and facts as set forth in the petition of the above entitled cause, shows;

a. Four (4) counts of deliberate perjury, by State witnesses concerning the statement alleged to have been made by the Defendant.

[fol. 23] b. Two (2) counts of deliberate perjury, whereas the witness admit to the Court, that they are being paid United States (Currency) to testify in the State's behalf, and naming their bribers, one (1) of which, named a Mr. Harold, the other naming State Police Officers.

c. The Defendant shows in the petition of the above entitled cause, that he was held incommunicado a period of six (6) days whereas he (Defendant), was misused, and abused by the police officers during part of the six (6) days, in efforts to make the Defendant sign the statement made out by them.

These facts as presented in the petition of this cause, all constitute a denial of, Due Process, Equal protection, and a fair and impartial trial, as is guaranteed by the Constitution of the United States of America, to each and every person.

3. Whereas a persons Constitution rights has been violated, the State Court's equally with Federal Courts, are under an obligation to guard and enforce every right secured by the Federal Constitution.

Wherefore, the petitioner, Julius Bernard Sherman, of P.C. 88, respectfully prays, that the motion entered against this cause on August 17, 1950, by the State, be striked, and quashed, by virtue of the above stated reasons, in order that law, and Justice may prevail.

Respectfully submitted, Julius B. Sherman, Petitioner, Pro Se.

[fol. 24] Notice of Service of copy of Motion to Quash (Omitted in Printing).

[fol. 25] In the Criminal Court of Cook County

[Title omitted]

Amended Petition—Received November 9, 1950

Your petitioner, the people of the State of Illinois, on the relation of Julius Bernard Sherman, appearing pro se. now comes by Amended Petition herein, same to have the same force, power and authority as though originally filed herein, and alleges unto this Honorable Court:

(1) That this Amended petition is hereto made part of the above entitled cause as fully and completely as though pleaded herein.

(2) That the reason for such Amendment to the original petition is to raise ten (10) questions not heretofore presented in the original petition.

(3) Perjured evidence submitted on the State's behalf by police officers, Carl Nelson (In transcript—pages 163, 165, 166).

(4) Perjured evidence submitted on the State behalf by police officer.

(4) James Foster (In transcript—pages 168, 169, 170).

(5) Perjured testimony given by witness for the State (Hun Lee Booker). In Transcript—page- 2 to 32.

(6) How police officer Louis Cella found the guns without producing the owners of guns in Court (In transcript page 211, to 221).

(7) Perjured testimony given by witness for the State (Classie Mann). In transcript page- 170 to 179.

(8) How Willie Franklin was instructed by his attorney to not take witness stand in my behalf. (In transcript page- 124, 125.)

[fol. 26] (9) How Willie Franklin was tried seperate for Robbery and Murder, and received a sentence of 1 to 2 years in prison.

(10) How Willie Franklin helped police officer find said guns. (In transcript page- 211 to 221.)

(11) How I was held in police station being beat for three days before signing phony confession. (In transcript page- 63 to 69.)

(12) Why? I was denied the right to call my witness to testify in my behalf.

It is prayed that petitioner may have such other and further relief in the premises as this Court may deem proper in order that law and justice may prevail.

Respectfully submitted, Julius Bernard Sherman,
Petitioner pro se, Box 1112, Joliet, Illinois.

[Received endorsement omitted.]

Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.

[fol. 27] Notice of Service of Copy of Amended Petition to State's Attorney in and for Cook County (omitted in printing).

[fol. 28] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

AMENDED MOTION

Now comes the respondent, People of the State of Illinois, by John S. Boyle, State's Attorney of Cook County, Illinois, and respectfully moves the Court to strike the following claims and allegations of the petition, to-wit:

1. That all of petitioner's allegations that perjured testimony was used against him be stricken, as the question of perjured testimony is not an issue of a substantial denial of a constitutional right, the claim of perjured testimony being a question of fact implicitly determined in the trial judgment of guilt or innocence.

2. That all of petitioner's allegations of the knowing use of perjured testimony be stricken as unsubstantiated conclusions of the petitioner and, moreover, conclusions and inferences of petitioner based only on statements which were made by witnesses at his trial, petitioner's conclusions thus being contrary to the judgment of the Court on the same facts on which petitioner now seeks to reverse the said judgment, and petitioner's claims thus being *res judicata*;

3. That the allegation of coercion in regard to petitioner's confession be stricken for the reason that this claim was litigated at his trial and decided against him, the issue therefore being *res judicata* and petitioner therefore being barred from obtaining—and the Court having no jurisdiction to grant or to use as a basis for relief to petitioner—another hearing on the same issue and the same or cumulative evidence.

4. That petitioner's claim that he was denied the right to have witnesses to testify in his behalf at his trial be stricken as a mere conclusion, for petitioner does not allege that he or his counsel made any attempt to use court process or that any such attempt was denied him by an officer of the Court.

5. That petitioner's claim that he was secretly placed on trial be stricken as a mere conclusion, for petitioner does [fol. 29] not show any facts to substantiate this claim, and for the further reason that in the absence of a showing that petitioner made an objection to the commencement of his

trial, it is presumed that he and his counsel answered or indicated the readiness of petitioner for trial.

Wherefore respondent moves that the petition as amended be stricken and that the proceeding be dismissed.

People of the State of Illinois, John S. Boyle, State's Attorney of Cook County. Charles W. Corcoran, Assistant State's Attorney.

[fol. 30] In the Criminal Court of Cook County

[Caption omitted]

[Title omitted]

Order Dismissing Petition—February 15, 1951

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

Counsel for said Petitioner now here moves the Court to Quash the State's Petition to Dismiss said Petition.

And the Court hearing Counsel in support of said motion as well as in opposition thereto and being fully advised in the premises doth overrule said motion and orders that said motion be and the same is hereby overruled accordingly.

And the Court hearing Counsel in support of the State's Motion to Strike Petitioner's Amended Petition, heretofore entered herein, as well as in opposition thereto and being [fol. 31] fully advised in the premises doth sustain said motion and orders that said motion be and the same is hereby sustained accordingly.

And it is ordered by the Court that Petitioner's Petition be and the same is hereby dismissed.

[fol. 32] (Clerk's certificate to foregoing transcript omitted in printing.)

[fol. 33] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DISMISSING PETITION FOR WRIT OF ERROR—May 24, 1951

And now, on this day, the Court having duly considered the motion for leave to file a writ of error under the Post Conviction Hearing Act as a poor person and for leave to file ten typewritten copies of abstract and brief, and being now fully advised of and concerning the premises; doth allow the motion to sue as a poor person. It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition, if requested.

[fol. 34] IN THE SUPREME COURT OF ILLINOIS

CLERK'S CERTIFICATE

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and Seal thereof, do hereby certify the foregoing to be a true copy of the record of this Court in a certain cause entitled: No. 1154, People State of Illinois, Defendant in Error, vs. Julius Bernard Sherman, Plaintiff in Error, Error to Criminal Court, Cook County, P.C. 88, filed in this office on a petition for writ of error under the Post Conviction Hearing Act the 14th day of April, A.D. 1951, the record of the Criminal Court of Cook County having been presented to the Court, with said petition. In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of August, A.D. 1951.

Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[fol. 35] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 29, Misc.

[Title omitted]

ORDER GRANTING CERTIORARI—October 8, 1951

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transfered to the appellate docket as No. 375, placed on the summary docket, and assigned for argument immediately following Nos. 95 and 96, Jennings vs. People of the State of Illinois, and La Frana vs. People of the State of Illinois.

No.

375

No. 375

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 375

JULIUS BERNARD SHERMAN,
Petitioner,

vs.

JOSEPH E. RAGEN, WARDEN OF ILLINOIS STATE PENITENTIARY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITIONER'S BRIEF

NATHANIEL L. NATHANSON,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petitioner's Brief	
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Summary of argument	3
Argument	5
I. The allegations of the petition set forth substantial claims of denial of due process with respect to the truth of of which, as a matter of federal law, the petitioner was entitled to a hearing	6
II. The judgment of the Illinois Supreme Court may not properly be interpreted as resting upon an adequate state ground	6
Conclusion	11
	13

Citations

Cases Cited:

Bram v. *United States*, 168 U. S. 532, 541	6
Darr v. *Burford*, 339 U. S. 200, 203-204	7
Gibbs v. *Burke*, 337 U. S. 773, 779	7
Haley v. *Ohio*, 332 U. S. 596	7
Holiday v. *Johnston*, 313 U. S. 342, 350	7
Lee v. *Mississippi*, 332 U. S. 742, 745	7
Lyons v. *Oklahoma*, 322 U. S. 396, 597, n. 1	7
Malinski v. *New York*, 324 U. S. 401, 402	7
Mooney v. *Holohan*, 294 U. S. 103	9
People v. *Touhy*, 397 Ill. 19	11
Price v. *Johnston*, 334 U. S. 266, 291-292	7

Page

Pyle v. *Kansas*, 317 U. S. 213 9
Rice v. *Olson*, 324 U. S. 786, 791-792 7, 13
Steele v. *Louisville and Nashville R. R.*, 323 U. S. 192, 197, n. 1 13
Tompkins v. *Missouri*, 323 U. S. 485, 487 7
Williams v. *Kaiser*, 323 U. S. 471 13

STATUTES

Ill. Rev. Stats. 1949, Ch. 38, secs. 826-832 2
Smith-Hurd Ill. Ann. Stats., Ch. 38, secs. 826-832 2

ARTICLES

Jenner, The Illinois Post-Conviction Hearing Act; 9 F.R.D. 347, 358 (1950) 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 375

JULIUS BERNARD SHERMAN,
Petitioner,

vs.

JOSEPH E. RAGEN, WARDEN OF ILLINOIS STATE PENITENTIARY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITIONER'S BRIEF

Opinion Below

The Supreme Court of Illinois did not render any opinion apart from the order dismissing petition for writ of error which is set forth in full at page 21 of the Record. The order reads in part as follows: "It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction hearing the same is found to disclose no violation or denial or any substantial

constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition, if requested."

Jurisdiction

The judgment of the Supreme Court of Illinois was entered May 24, 1951 (R. 21). The petition for writ of certiorari was filed June 9, 1951 and was granted October 8, 1951. The jurisdiction of this Court rests on 28 U. S. C. section 1257(3).

Questions Presented

The questions presented are: (1) Whether the Illinois Supreme Court erred in holding that there was "no violation or denial of any substantial constitutional rights of the petitioner under the Constitution of the United States" resulting from the dismissal, without a hearing on the truth of the allegations, of a petition under the Illinois Post-Conviction Hearing Act which alleged that the petitioner had been deprived of his liberty without due process of law through the use of perjured testimony given by witnesses who had been bribed by state officials to testify falsely against the petitioner and through the use of an involuntary confession extorted by police officers; (2) Whether the judgment of the Illinois Supreme Court may be interpreted as resting upon an adequate state ground.

Statute Involved

The Illinois Post-Conviction Hearing Act (Ill. Rev. Stats., 1949, ch. 38, secs. 826-832; Smith-Hurd Ill. Ann. Stats., ch. 38, secs. 826-832) is set forth in full in Appendix A of petitioner's brief in *Jennings* v. *Illinois*, No. 95, October Term, 1951.

Statement

On July 25, 1950, petitioner, Julius Bernard Sherman, filed a petition in the Criminal Court of Cook County, State of Illinois under the Illinois Post-Conviction Hearing Act (R. 5-15), accompanied by a motion for leave to file the petition as a poor person without payment of costs on the ground that petitioner "is a poor person without sufficient funds to pay the costs of these proceedings or to give security therefor" (R. 4). On November 9, 1950, petitioner filed an amended petition adding certain allegations to the original petition (R. 17-18). The original petition stated that on October 29, 1947, the petitioner, together with a co-defendant, named Edgar Williams, was tried and convicted by the Court sitting without a jury, jury trial having been waived, on two separate indictments charging murder and robbery. Petitioner was sentenced to two concurrent terms of 30 years on the murder charge and 10 to 30 years on the robbery charge (R. 5).

According to the allegations of the petition, the petitioner was arrested at his place of employment, The W. F. Hall Printing Company, located at 4600 West Diversey Blvd., about 8:30 p m. on March 6, 1947 by four police officers and was taken to the 48th Street Police Station and was detained there on an open charge (R. 9). When arrested, petitioner was told he was wanted as an accomplice to one Willie Franklin, concerning a murder and robbery which had been committed. The police officers told petitioner that Willie Franklin was already in custody and under arrest, but petitioner was not brought face to face with Willie Franklin until about four days after petitioner's arrest. During those four days the police officers blackjacked, clubbed and kicked petitioner in efforts to make him confess. On March 10, 1947, or thereabouts, petitioner was confronted with Willie Franklin, who denied knowing him. On the third

night after his arrest, petitioner was compelled to present himself at a private "show-up" in the 48th Street Police Station before two men, one of whom the petitioner later learned was Hun Lee Booker, a porter employed at the Tulane Liquor Store, who was supposed to have been in the store on January 10, 1947 with George Bloom, when two armed men entered the store for the purpose of the robbery which culminated in the shooting of Mr. Bloom. Although the police pointed to petitioner as one of the men who helped rob and kill George Bloom, the porter, Hun Lee Booker, did not then identify petitioner as one of the participants in the crime (R. 10). Thereafter, the police officers continued to beat and abuse the petitioner for three more days in order to induce him to confess and also continued to hold him on open charges and to deny him the opportunity of communicating with friends and relatives or obtaining an attorney.

On the seventh day after the petitioner's arrest, Hun Lee Booker, the porter, and Harold Bloom, son of the slain man, George Bloom, were brought to the 48th Street Police Station to listen to the reading of a confession supposed to have been made by petitioner, one Williams and Willie Franklin (R. 10).

Petitioner was tried with a co-defendant, Edgar Williams, on charges of having murdered George Bloom on January 10, 1947 in the liquor store owned by Bloom. At the trial, two witnesses, Miss Classie Mann and Hun Lee Booker, testified for the State against petitioner (R. 7, 8, 12). Upon cross-examination both witnesses testified they were being paid to testify (R. 8, 12).

The petition also sets forth that petitioner has previously filed an original petition for a writ of habeas corpus in the Criminal Court of Cook County, Illinois, and that this petition was denied on motion of the State's Attorney without

a hearing inquiring into the truth or falsity of the allegations (R. 13). The petitioner then filed in this Court a petition for writ of certiorari; the petition was granted and the order of the Criminal Court of Cook County denying the petition for the writ of habeas corpus was vacated. After the remand and after argument in the Criminal Court of Cook County, Illinois, the petition was dismissed on the ground that habeas corpus was not the proper remedy. Thereupon a petition for certiorari was filed in this Court on January 29, 1950 (R. 14). In the petition this Court was advised of conflicts in the courts of Illinois concerning the constitutionality of the Illinois Post-Conviction Hearing Act and was requested to withhold action on the petition for certiorari until the constitutionality of the statute was determined by the Illinois Supreme Court. In May 1950, the statute was declared constitutional by that Court (R. 13-14).

In response to the petition the State's Attorney of Cook County moved to strike the petition and to dismiss the proceedings (R. 15). After the filing of the amended petition, the State's Attorney moved to strike the additional allegations and again asked for dismissal of the proceeding. On February 15, 1951 the Court entered an order sustaining the State's Attorney's motion and dismissing the petition.

On March 22, 1951, petitioner filed a petition for writ of error in the Illinois Supreme Court (R. 1-3) and on May 24, 1951 the Illinois Supreme Court entered its order dismissing the petition.

ARGUMENT.

I. The Allegations of the Petition Set Forth Substantial Claims of Denial of Due Process With Respect to the Truth of Which, as a Matter of Federal Law, the Petitioner Was Entitled to a Hearing.

The petition originating this proceeding, though artlessly drawn, nevertheless provides a circumstantial account of the way in which the petitioner was denied due process in the conduct of his trial. The allegations show clearly that the petitioner was held under illegal detention for at least seven days, during which time he was deprived of the aid of friends, relatives and counsel, and subjected to extreme physical brutality, as well as continued questioning, until a confession, apparently satisfactory to the police officers, was secured. The statement filed by the Attorney General in response to the petition for certiorari suggested that all this was irrelevant since the confession contained the statement, "I would rather not sign the statement because it is not true." (R. 11), and because "there can be no presumption that the judge based the court's conviction and sentence in whole or in part on this statement."

This suggestion is based on erroneous assumptions of both fact and law. The fact that the confession contained one statement in which the petitioner sought to disavow its effect does not prove that there were not other equally positive statements in the document by virtue of which petitioner ostensibly adopted the confession as his own. Indeed the very fact that the document was offered in evidence against petitioner shows that the prosecution was satisfied that it contained enough damaging statements to warrant its submission in evidence. As this Court said in *Bram* v. *United States*, 168 U. S. 532, 541; "the prosecution cannot on the one hand offer evidence to prove guilt, and which

by the very offer is vouched for as tending to that end, and on the other hand for the purpose of avoiding the consequences of the error, caused by its wrongful admission, be heard to assert that the matter offered as a confession was not prejudicial because it did not tend to prove guilt." The petitioner's obvious misapprehension in thinking that he aided his cause by quoting only that part of the confession which cast doubt on its authenticity does not negate this principle. Pleadings drawn by unlettered prisoners are not thus strictly to be construed as if they were the work of skilled draftsmen. *Holiday* v. *Johnston*, 313 U. S. 342, 350; *Tompkins* v. *Missouri*, 323 U. S. 485, 487; *Rice* v. *Olson*, 324 U. S. 786, 791-792; *Price* v. *Johnston*, 334 U. S. 266, 291-292; *Gibbs* v. *Burke*, 337 U. S. 773, 779; *Darr* v. *Burford*, 200, 203-204.

There is also no basis for the further suggestion of the Attorney General that there can be no presumption that the conviction was based in whole or in part on the statement offered by the state as a confession. This Court has several times made it clear, that the existence of evidence, entirely aside from the coerced confession, sufficient to sustain the conviction, does not cure the violation of due process arising from the introduction of a coerced confession. See *Lyons* v. *Oklahoma*, 322 U. S. 596, 597, n. 1; *Malinski* v. *New York*, 324 U. S. 401, 402; *Haley* v. *Ohio*, 332 U. S. 596, 599; *Lee* v. *Mississippi*, 332 U. S. 742, 745. The fact that the trial here was before a judge without a jury does not render the reason for the rule any the less applicable, for this Court could hardly undertake to say how significant a part the confession itself played in the process of decision. It is enough to invoke the protection of the due process clause that the confession was offered by the state and admitted by the court to be accorded such weight as the trier of the facts might be disposed to give it.

Nor is there any additional reason for holding this principle inapplicable because the trial judge, according to the allegations of the petition, indicated that he would "throw the case out of his court room" unless the state produced some witnesses against the petitioner (R. 11). The mere fact that the trial judge insisted upon some corroboration for the confession does not mean that he had decided not to give any weight at all to the confession itself if it were corroborated by other evidence. There is nothing in the facts stated to distinguish this case from the usual situation of two pieces of evidence, neither of which is alone sufficient to support a conviction, but both of which are entitled to some weight. And it is certainly no cause for surprise that the trial judge, in a murder case, should insist upon some corroboration for a confession, irrespective of whatever doubts he might have had with respect to the voluntary character of the confession. Even conceding that the trial judge might have harbored doubts with respect to voluntary character of the confession, that is far from establishing that he was unprepared to give it some weight if some corroboratory evidence were produced.

But it is artificial to speak of the other evidence in this case as if it could be entirely divorced from the voluntary or involuntary character of the confession. From the allegations of the petition, it appears that the most damaging evidence against petitioner, aside from the confession, was the testimony of Hun Lee Booker, who identified petitioner as one of the robbers. But it was Hun Lee Booker who prior to the trial was unable to identify petitioner as one of the robbers, even at a private show-up, but who was finally persuaded by the police, when they were able to produce the confession which they had extorted, that petitioner was one of the robbers. Thus both the confession itself and the major corroborating evidence were the inter-

connected fruits of the same course of illegal conduct by the police officers, and the state's use of the testimony of Booker was as offensive to the fundamental tenets of fairness embodied in due process as was the use of the coerced confession itself. Under such circumstances, it is particularly unrealistic for the Attorney General to suggest, as he did in his response, that the petitioner did not allege that the police officers knew that the testimony of Booker was false. The whole purport of the petition is that the police officers, without regard for truth or their obligations of fairness, deliberately manufactured the evidence against petitioner, and as part of that manufactured evidence, persuaded Booker to testify that petitioner was one of the robbers, when they well knew that Booker had previously been unable, on the basis of his own observation, to identify the petitioner. In this posture of the case, it is immaterial whether the money paid to the witnesses for testifying was really a bribe or as the Attorney General suggests, merely the compensation customarily paid to "recompense witnesses, particularly those in straitened financial circumstances, for their time, transportation, and loss of earnings in testifying." Irrespective of what part financial inducements may have played in refreshing Booker's recollection, the allegations were sufficient to make out a prima facie case of evidence deliberately manufactured by the police and used by the prosecution for the purpose of securing a conviction. Thus the entire picture is one of fundamental unfairness for which officials of the state were clearly responsible, and against which the protection of due process clause may properly be invoked under the principles of *Mooney* v. *Holohan*, 294 U. S. 103, and *Pyle* v. *Kansas*, 317 U. S. 213.

It remains only to consider the ground advanced in the State Attorney's motion to dismiss the petition that the

"allegation of coercion be stricken for the reason that this claim was litigated at his trial and decided against him, the issue therefore being res judicata and petitioner therefore being barred from obtaining—and the Court having no jurisdiction to grant or to use as a basis for relief to petitioner—another hearing on the same issue and the same or cumulative evidence" (R. 19). The Attorney General, in his response, did not suggest the same ground, perhaps because there is nothing in this record which affirmatively esfablishes that the claim of coerced confession was indeed litigated and determined at the original trial, although there is some suggestion to that effect in the reference to the doctor's testimony (R. 11). Be that as it may, the argument developed at length under Point I in the Brief for Petitioner in *Jennings* v. *Illinois*, No. 95 October Term 1951, is relevant here and is incorporated herein. As suggested there, there is no hard and fast principle of federal law justifying the application of the doctrine of res judicata to a claim of deprivation of liberty without due process of law presented in a post-conviction proceeding, particularly where, as in Illinois, the cost of the transcript presents a formidable obstacle preventing an impecunious defendant from securing direct review of questions of fact such as that of a coerced confession.

It is true that this petitioner does not specifically allege that he has been unable to afford the cost of the transcript. However, he did allege, in connection with the filing of the original petition under the Post-Conviction Hearing Act, that "he is a poor person without sufficient funds to pay the cost of this proceeding or to give security therefore" (R. 4). In the light of this allegation there can be no doubt that he was also unable to pay the much greater costs of obtaining the transcript of the record for the purposes of filing a bill of exceptions in connection with a writ of error to review his conviction. If the argument advanced in peti-

tioner's brief in the *Jennings* case with respect to the cost of the transcript is sound, this petitioner should not be deprived of the benefits of that argument simply because he did not fashion his allegations in the exact form which would have best fitted the argument. It should be sufficient that he is clearly one of those persons belonging to the class which would be directly affected by the kind of obstacle which the cost of the transcript in Illinois presents.

II. The Judgment of the Illinois Supreme Court May Not Properly Be Interpreted as Resting upon an Adequate State Ground.

The Attorney General also suggested in his response that the judgment of the Illinois Supreme Court should not be disturbed because it may have rested on the ground that the petition did not comply with section 2 of the Illinois Post-Conviction Hearing Act which provides: "The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." The Attorney General suggests that this ground is consistent with the statement incorporated in the judgment of the Court that "after having examined and reviewed the petition and record in the post-conviction hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the Constitution of the United States or of the Constitution of Illinois."

The Attorney General in effect concedes that this is a tortured reading of the language of the judgment, but nevertheless finds support for his position in the opinion of the Illinois Supreme Court in *People* v. *Touhy*, 397 Ill. 19, where the Illinois Court explicitly stated that the allegations regarding perjury in a motion in the nature of a writ of error coram nobis, need not be accepted as true in

the absence of supporting affidavits because they were mere conclusions of the pleader. But in the *Touhy* case the allegations, as the court pointed out, related to matters outside the personal observation of the petitioner, quite unlike the allegations in this petition. For example, even the Attorney General apparently recognizes that the same reasoning could not be applied to the allegations herein, regarding the coerced confession, since they are based on a circumstantial account of events within the knowledge of the petitioner, as set forth in his verified petition. The petitioner could hardly be expected to produce affidavits from the police officers involved but he does suggest that corroboration might be found in the testimony of the doctor (R. 11). Furthermore, the allegations with respect to the false testimony deliberately induced by the police are also based on the observations of the petitioner as set forth in his verified petition—namely the failure of the witness Booker to identify petitioner at the show-up and the insistence of the police to Booker that petitioner was the man, as evidenced by his confession. Such allegations are clearly not on a par with those involved in the *Touhy* case.

But the major distinction is that in the *Touhy* case the Illinois Supreme Court expressly rested on state grounds whereas in the present case the judgment was expressly rested on federal grounds. Even if there were any room for doubt on the basis of the language in the judgment, it should be dispelled by the fact that exactly the same language was used in the judgments in the *Jennings* and *La Frana* cases, where the petitions clearly complied with the formal requirements of the statute and the Attorney General did not suggest, in his response, that the judgments rested on state grounds. Moreover, it is our understanding that when the Illinois Supreme Court has meant to say that the petition for writ of error was being dismissed on account

of failure to comply with the Post-Conviction Hearing Act, it has placed the dismissal on the ground that the petition has been "found insufficient" and added that the judgment was "without prejudice" apparently, so as to avoid the likelihood that the lower court would regard the dismissal as a bar to a second petition. *Cf. Jenner*, The Post-Conviction Hearing Act, 9 F. R. D. 347, 358 (1950). It is one thing to suggest that a state court judgment may rest on adequate state grounds when no grounds are stated, but quite another thing to make the same suggestion when federal grounds are explicitly stated. See *Steele* v. *Louisville and Nashville R. R.*, 323 U. S. 192, 197, n. 1. In *Williams* v. *Kaiser*, 323 U. S. 471, and *Rice* v. *Olsen*, 324 U. S. 786, there may have been room for difference of opinion in the proper application of this well established principle, since the language of the state court's judgment did not expressly refer to federal as distinguished from state grounds. But here the Illinois Supreme Court has expressly found no merit in the claims of federal right. There is therefore no room for reliance on grounds of state law to support the judgment.

Conclusion

Petitioner is entitled to a hearing on the truth of his allegations with respect to the use of a coerced confession and perjured testimony to secure his conviction. Because the Illinois Supreme Court, on grounds of federal law, denied him such a hearing, its judgment should be reversed.

Respectfully submitted,

NATHANIEL L. NATHANSON,
Counsel for Petitioner.

No.

375

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 375

JULIUS BERNARD SHERMAN,

Petitioner,

vs.

JOSEPH E. RAGEN, Warden, Illinois State Penitentiary, Joliet, Illinois,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT.

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WILLIAM C. WINES,
RAYMOND S. SARNOW,
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Of Counsel.

INDEX.

	PAGE
Argument	5
Opinion Below	2
Respondent's Acceptance of Petitioner's Statement of the Case	1
Summary of Argument	3
The Questions Presented	2

CASES CITED.

Lisenba v. California, 314 U. S. 219	5-7
Screws v. United States, 325 U. S. 91	5

IN THE

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT.

RESPONDENT'S ACCEPTANCE OF PETITIONER'S STATEMENT OF THE CASE.

Petitioner's counsel has stated the case fully, fairly and accurately. We accept his Statement of the Case without correction or addition.

Opinion Below.

As petitioner's brief correctly states, the Illinois Supreme Court rendered no opinion other than the memorandum and rescript fully and correctly set forth in petitioner's brief. It is not reported.

The Questions Presented.

I.

DOES THE ILLINOIS SUPREME COURT'S OPINION REST UPON THE ADEQUATE GROUND OF STATE LAW THAT THE ILLINOIS POST CONVICTION REMEDIES ACT DOES NOT AFFORD A MEANS OF ASSERTING MATTERS OF FACT OR CLAIMS OF CONSTITUTIONAL RIGHT THAT WERE OR MIGHT HAVE BEEN PRESENTED IN THE PROCEEDINGS CULMINATING IN PETITIONER'S CONVICTION, IT NOT APPEARING THAT HE WAS PREVENTED FROM ASSERTING SUCH ALLEGED FACTS OR CLAIMS IN THAT ANTECEDENT PROCEEDING?

II.

IF PETITIONER'S ASSERTIONS OF ALLEGED FACT ARE COGNIZABLE AND HIS CLAIMS OF CONSTITUTIONAL RIGHTS ARE COGNIZABLE IN THIS PROCEEDING, DOES PETITIONER'S APPLICATION FOR POST CONVICTION RELIEF SUBSTANTIALLY DISCLOSE THAT HE IS IMPRISONED WITHOUT DUE PROCESS OF LAW?

SUMMARY OF ARGUMENT.

I.

The Illinois Supreme Court's judgment rests solely upon the ground that Illinois' Post Conviction Remedies Act does not afford an appropriate mode of asserting constitutional claims that were or might have been presented in the proceedings culminating in petitioner's conviction, there being no substantial suggestion that those claims were not and could not have been presented in those proceedings. This is a ground of State procedure, not of Federal constitutional law. Therefore this writ of *certiorari* should be dismissed. (See *Jennings* v. *Illinois*, No. 95 and *La Frana* v. *Illinois*, No. 96.)

II.

The scope of permissible inquiry upon Federal *habeas corpus* is not an obligatory measure of the scope of inquiry afforded by a purely statutory State proceeding. (See *Jennings* v. *Illinois*, No. 95 and *La Frana* v. *Illinois*, No. 96.)

III.

Even if the Federal scope of inquiry as to collateral attack on judgments of conviction were the measure of inquiry under this State statutory proceeding, petitioner would not be entitled to a retrial of issues which he litigated or could have litigated at the time of his original conviction. (See *Jennings* v. *Illinois*, No. 95 and *La Frana* v. *Illinois*, No. 96.)

IV.

If the merits of the case were before the Illinois Supreme Court, then its judgment must still be affirmed because it must be deemed to have weighed petitioner's affidavit as against the evidence and findings in the trial court record and therefore permissibly concluded that petitioner had not "demonstrated" a denial of due process of law. (See *Jennings* v. *Illinois*, No. 95 and *La Frana* v. *Illinois*, No. 96.)

V.

Even if petitioner's allegations and claims are cognizable in this proceeding, they do not substantially charge that petitioner's imprisonment denies him Federal due process.

ARGUMENT.

Respondent respectfully refers to Points I, II, III and IV of its Argument, in *Jennings* v. *Illinois*, No. 95, and *La Frana* v. *Illinois*, No. 96, October Term, 1951, and incorporates them in this brief by reference thereto.

V.

Even if petitioner's allegations and claims are cognizable in this proceeding, they do not substantially charge that petitioner's imprisonment denies him Federal due process.

Petitioner's application for post conviction relief relates a shocking narrative of police brutality. But it does not show or fairly compel the inference that such brutality culminated in or contributed to petitioner's sentence and sentence.

Although police brutality may violate a prisoner's constitutional rights, so as to give rise to Federal prosecution of the offending official (*Screws* v. *United States*, 325 U. S. 91), it does not vitiate a conviction unless the brutality contributed to the conviction, as where it coerced the accused into pleading guilty in open court or into signing a confession upon which such conviction rested *in whole or in part*. *Lisenba* v. *California*, 314 U. S. 219, is directly in point. This Court said, at page 235:

> "* * * Moreover, petitioner does not, and cannot, ask redress in this proceeding for any disregard of due process prior to his trial. The gravamen of his complaint is the unfairness of the use of his confessions, and what occurred in their procurement is relevant only as it bears on that issue."

In the *Lisenba case, supra,* the Court said at page 236:

> "On the other hand, the fact that the confessions have been conclusively adjudged by the decision below to be admissible under State law, notwithstanding the circumstances under which they were made, does not answer the question whether due process was lacking. The aim of the rule that a confession is admissible unless it was voluntarily made is to exclude false evidence. Tests are invoked to determine whether the inducement to speak was such that there is a fair risk the confession is false. These vary in the several States. This Court has formulated those which are to govern in trials in the Federal courts. The Fourteenth Amendment leaves California free to adopt, by statute or decision, and to enforce, such rule as she elects, whether it conform to that applied in the federal or in other state courts."

In this case, the trial was before the court without a jury. Hence there was no need, except a formal one, for the trial judge to hold a "preliminary hearing", conceptually and formally distinct from the trial before him although actually forming a part of it, to determine whether he would "receive" the confession. Such a hearing serves a real purpose when it is in the absence of a jury which is to hear the confession if it is admitted and not to hear it if it is excluded. It would serve no purpose for a judge to hold such a "preliminary hearing" in a case where he, and he alone, is the sole trier of the facts.

But in any event, the document styled a "confession" contained petitioner's legend, "I would rather not sign this confession, because it is not true." Petitioner's counsel argues that the document was nevertheless incriminatory in part. However this may be, it appears that the trial judge said in substance that he would "throw the case out of court" unless the State produced some evidence other than this "confession" which was not a confession at all.

The State did produce other witnesses, who testified directly to petitioner's guilt and whom the trial court believed.

So far as the alleged perjury of the witness Booker and Miss Mann is concerned, while petitioner says that their testimony was false and that they were paid to give it by the police officers, he does not allege that the police officers *knew* that the testimony was false. The payment may well have been, and it should be presumed that it was, the compensation customary to recompense witnesses, particularly those in straitened financial circumstances, for their time, transportation and loss of earnings in testifying.

In any event, the issue of the truth or falsity of this testimony was litigated at petitioner's trial. Due process does not require that it be relitigated.

Lisenba v. *California*, 314 U. S. 219, is again in point. In that case the reward given to the witness who implicated the defendant was far more substantial than money. It was life itself; for the witness was admittedly spared the death penalty in exchange for his testimony. This Court said, at page 227:

> "* * * There is no adequate showing that there was a corrupt bargain with Hope, and the practice of taking into consideration, in sentencing an accomplice, his aid to the State in turning state's evidence can be no denial of due process to a convicted confederate."

A fortiori, the unexplained payment of money to a witness does not so taint his testimony as to vitiate a conviction resting thereon. The Court will take judicial notice that the Department of Justice spends large amounts of money in transporting, feeding and housing important witnesses in Federal criminal prosecutions.

In short, the record discloses that the trial court heard evidence concerning petitioner's alleged "confessions", rejected it as a basis for petitioner's conviction, and heard witnesses whose motives and inducements for testifying were fully explored at the trial. The trial court believed the evidence against petitioner and convicted him.

Such a record does not demonstrate the lack of fundamental fairness inherent for reversal in this Court under the due process clause of the Fourteenth Amendment.

This does not make a case of due process denied.

Conclusion.

For reasons apparent on the record and urged in this brief, it is respectfully submitted that the Illinois Supreme Court's judgment rests upon adequate State grounds, wherefore the writ of error should be dismissed.

But if this case be before this Court on the merits, then it is submitted that the Illinois courts' judgments should be affirmed.

Respectfully submitted,

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